

THE CONSTITUTIONAL HISTORY OF MALAYA WITH SPECIAL
REFERENCE TO THE MALAY STATES OF PERAK,
SELANGOR, NEGRI SEMBILAN AND PAHANG,
1874-1914

BY

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ABSTRACT

British Residents were appointed to the tin-producing States of Perak, Selangor and Sungai Ujong during 1874-5 and later to Negri Sembilan and Pahang. Although they were only sent to preserve order and give advice, the Residents soon found it necessary to take charge of the affairs of these States. In most of the mining districts Malay authority had ceased to exist while British officers found Malay political institutions unsuited to implementing their advice. The indigenous political system was preserved, however, largely to legitimize Resident rule and to a lesser extent to enable the British officers to govern the less productive districts. The indigenous institutions were subordinate to new ones which were centralised and bureaucratic and organised to facilitate capitalist enterprise.

The so-called federation of the four states in 1895 was designed to encourage even greater economic development. The prosperity which Federation helped to foster only intensified the centralisation of authority in the office of the chief executive authority - the Resident-General - and his federal officers. But this development provoked a reaction among the rulers and Residents who resented their loss of power and the intrusion of federal officers in State matters. It also resulted in excluding the

High Commissioner, as the Governor was known after 1896, from any but nominal control over the administration of the Federated Malay States. Sir John Anderson's efforts after 1904 to effectively establish his authority in the Federation produced some important constitutional changes but *made* no appreciable effect ~~an~~ the actual powers of the Resident-General, or his successor, the Chief Secretary to Government.

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PREFACE

A number of recent studies including Professor C.D. Cowan's Nineteenth Century Malaya, (London, 1961), Professor C.N. Parkinson's British Intervention in Malaya, (Singapore, 1960), Dr. E. Thio's unpublished doctoral thesis of the University of London, 1956, 'British Policy in the Malay Peninsula, 1880-1909,' and Dr. D. McIntyre's article 'Britain's intervention in Malaya: the origin of Lord Kimberley's instructions to Sir Andrew Clarke in 1873'⁽¹⁾ have discussed the circumstances surrounding the appointment of resident British officers to the Malay States and the expansion of British interests in the Peninsula to the end of the first decade of the twentieth century. In this study an attempt is made to consider the kind of administration which developed under the British Residents during 1874-1914 within the context of Malaya's modern constitutional history.

'Modern' is used here not only to convey a place in time, but also to describe the kind of political institutions which grew up under Resident rule - those of a centralised bureaucratic administration based upon English notions of colonial government. The 'Residential System', as some characterised this development, marks, therefore, the point of departure for this study. While 'Malaya' is meant to include the nine sultanates which form Malaysia

(1) JSEAH, VOL.2, NO.3 (1961) pp.47.

of to-day as well as Singapore, Malacca and Penang, special attention is devoted to the four states of Perak, Selangor, Negri Sembilan and Pahang. These states are of particular interest as all later constitutional developments were centered upon them. Moreover, the forty years covered by this study were critical in determining the structure of modern political institutions in Malaya. Indeed, all subsequent reforms - particularly those instituted by Sir Laurence Guillemard and Sir Cecil Clementi - were, in part, attempts to decentralise the 'bureacratic amalgamation' which grew up after 1895.

In so far as this thesis is a study of colonial rule, the first part is concerned with the establishment of Resident rule. It deals with those factors which shaped colonial administration and describes the forms created to maintain and legalize the Residents' authority. The growth of new political institutions is discussed against the background of the existing political order. The second part of the thesis is concerned with the growth of a supra-State administration after 1895. It traces the formation of the 'Federation' and the growth of a 'federal' government. Finally, it considers the shifts in power between the State and Federal governments and the structural modifications of these institutions.

The system of Malay spelling used throughout, except where it differs in quotation, is that employed by Sir Richard Winstedt in his An Unabridged Malay-English Dictionary, third edition, (Singapore, 1959). English plural forms, however, have been used; thus the plural of penghulu is penghulus.

ABBREVIATIONS

<u>AR</u>	<u>Annual Report</u>
CAB	Cabinet Office Records, Public Records Officer, London.
CO	Colonial Office Records, Public Records, London.
Col. Sec.	Colonial Secretary, Straits Settlements.
<u>DNB</u>	<u>Dictionary of National Biography.</u>
<u>DOMR</u>	<u>District Officer's Monthly Report.</u>
<u>Fed. Co. Paper</u>	<u>Federal Council Paper.</u>
<u>Fed. Co. Pro.</u>	<u>Federal Council Proceedings.</u>
<u>FMSGG</u>	<u>Federated Malay States Government Gazette, (Kuala Lumpur).</u>
<u>FMSLR</u>	<u>Federated Malay States Law Reports, (Kuala Lumpur).</u>
FO	Foreign Office Records, Public Records Office, London.
GO	General Order
<u>IAQR</u>	<u>Imperial and Asiatic Quarterly Review, (London).</u>
<u>JMBRAS</u>	<u>Journal of the Straits Branch of the Royal Asiatic Society, (Singapore)</u>
<u>JSCL</u>	<u>Journal of the Society of Comparative Legislation, (London).</u>
<u>JSBRAS</u>	<u>Journal of the Straits Branch of the Royal Asiatic Society, (Singapore).</u>
<u>JSEAH</u>	<u>Journal of Southeast Asian History, (Singapore).</u>
<u>MJTG</u>	<u>Malayan Journal of Tropical Geography, (Singapore).</u>

<u>NSGG</u>	<u>Negri Sembilan Government Gazette</u> , (Kuala Lumpur).
OAG	Officer Administering the Government, Straits Settlements.
<u>PaGG</u>	<u>Pahang Government Gazette</u> , (Kuala Lumpur).
PaSC	Pahang State Council Proceedings.
<u>PMS 1</u>	<u>Papers on Malay Subjects</u> , first series
<u>PMS 11</u>	<u>Papers on Malay Subjects</u> , second series.
<u>PGG</u>	<u>Perak Government Gazette</u> , (Taiping).
PRO	Public Records Office, London.
Sec. State	Secretary of State for the Colonies.
<u>SGG</u>	<u>Selangor Government Gazette</u> , (Kuala Lumpur).
Sel. Rec.	Selangor Records.
<u>SLJ</u>	<u>Straits Law Journal</u> , (Singapore).
SSC	Selangor State Council Proceedings.
<u>SSGG</u>	<u>Straits Settlements Government Gazette</u> , (Singapore).
<u>SSLC Pro.</u>	<u>Straits Settlements Legislative Council Proceedings</u> .
<u>SSLC Paper</u>	<u>Straits Settlements Legislative Council Paper</u> .
<u>SSLR</u>	<u>Straits Settlements Law Reports</u> , (Singapore).
<u>SUGG</u>	<u>Sungai Ujong Government Gazette</u> , (Kuala Lumpur).
SUSC	Sungai Ujong State Council Proceedings.

TABLE

EXCHANGE VALUE OF THE STRAITS DOLLAR*

Year	Sterling Exchange Rate
1888	3s.
1889	3s.
1890	3s. 4d.
1891	3s. 2 $\frac{1}{4}$ d.
1892	2s. 10d.
1893	2s. 6 $\frac{1}{3}$ d.
1894	2s. 1d.
1895	2s. 1 $\frac{1}{2}$ d.
1896	2s. 3 $\frac{1}{17}$ d.
1897	1s. 11 $\frac{1}{2}$ d.
1898	1s. 11d.
1899	1s. 11 $\frac{1}{3}$ d.
1900	2s.
1901	1s. 11d.
1902	1s. 8 $\frac{1}{2}$ d.
1903	1s. 9d.
1904	1s. 10 $\frac{1}{2}$ d.
1905	2s.
1906-1936	2s. 4d.

*From R. Emerson, Malaysia: a Study in Direct and Indirect Rule, (New York, 1937).

CHAPTER 1

THE SETTING AND BACKGROUND

A range of low mountains reaching down from the north divides the Malay Peninsula and provides a natural boundary between the states of Kelantan, Trengganu and Pahang to the east and, Kedah, Perak, Selangor and Negre Sembilan in the west. In northern Perak a spur of sharply rising hills sets off the Perak river basin - Perak Besar - from the western districts of Larut and Krian while southwards the main range diminishes in altitude to the borders of Malacca dividing the cluster of tiny states which form modern Negri Sembilan. Between northern Larut and Negri Sembilan, and set against the foot-hills, are located Malaya's richest deposits of tin-ore. The production and export of this mineral has for centuries constituted an important element in Malaya's economy. Although tin has long been mined in the Peninsula it was not until the late nineteenth century that large quantities were exported to Europe. So intense was this development after the 1830's that it profoundly effected the three principal tin-mining states of Perak, Selangor and Sungai Ujong, severely straining the structure of the political system and altering the

character of the economy.¹

Although complex in detail, a general pattern of the political economic consequences of this development is discernible. In the 1870's the Malays were settled along the principal rivers grouped in small villages (kampongs) subject to the authority of the village headmen (penghulus) and regional chiefs (datos). The powers of the chief depended upon his ability to control the sources of revenue, from which he could provide a following to maintain his political authority. Revenue was derived from taxing the padi and jungle produce cultivated and collected by the people of his own district and gained in particular from duties levied upon the traffic which passed along his section of the river. Some chiefs also gained a small income from promoting mining ventures within their districts, either by themselves or in conjunction with Chinese capitalists from the Straits Settlements. During the 1850's Chinese participation increased. They supplied labour and capital to exploit more intensively tin-workings of Larut and Kinta in Perak, of Klang, Ampang, Kanching and Lukut in Selangor and of Seremban in Sungai Ujong.²

1. Wong Lin Ken, 'The Malayan Tin Industry to 1914 with special Reference to the States of Perak, Selangor, Segri Sembilan and Pahang,' Unpublished Ph.D. thesis, 1959, University of London, pp.42-77 discusses the expansion of the industry in the Malay States up to 1874.

2. Ibid. See also Wong Lin Ken, 'Western Enterprise and the Development of the Malayan Tin Industry to 1914,' in C.D. Cowan, (Ed.), The Economic Development of South East Asia, (London, 1964), p. 127.

Yet, while the expansion of the tin industry brought prosperity to those districts where the mines were located, it threatened the very structure of the Malay political system. It gave rise to the establishment of alien communities whose presence in large numbers constituted a threat to Malay authority and it also intensified the dynastic struggles between Malay chiefs who sought control of lucrative tin districts thereby dividing the polity still further.³

In Perak, Larut was the most important mining district. Somewhat removed from Perak Besar, it was first gradually opened up by a regional tax-collector, Long Ja'afar. His success in developing Larut was rewarded by his appointment as territorial chief in 1850, and under his son - later Mantri of Perak - Ngah Ibrahim, the area became the most important tin-mining region in Malaya.⁴ Chinese capital and labour poured into the district throughout the 1850s and 1860s to work mines at Taiping (Kelian Pauh) and Kamunting (Kelian Baharu). Its high quality ore and proximity to Penang made it attractive to investors, especially for those who were also able to secure the revenue farms on opium, pork, spirits, and gambling. Recruitment of labour and its

3. For further development of the economic aspect of the Malay political system, see J.M. Gullick, Indigenous Political Systems of Western Malaya, (London, 1958), pp. 124-31.

4. J.M. Gullick, 'Captain Speedy of Larut,' JMBRAS, Vol.XXVI, Pt. 3, (1953), pp. 19-22; C.D. Cowan, 'Sir Frank Swettenham's Perak Journals, 1874-1876,' JMBRAS, Vol.XXIV, Pt. 4, (1951) pp. 13-4; R.O. Winstedt, and J.R. Wilkinson, 'A History of Perak,' JMBRAS, Vol.XII, pt.1, (1934), pp. 78-81.

gambling. Recruitment of labour and its organization in Larut was controlled by the secret societies with headquarters in Penang. Two major secret societies operated in Larut in the 1870's: the Hai San society (locally called Goh Kwans, or Five Districts) consisting of Hakka or Hokkien; and Ghi Hins (or Si Kwan, or Four Districts) which was predominantly Cantonese. Intense rivalry and quarrels, arising over control of mines, water supplies, and mining land, led to violent clashes which erupted⁵ in 1862 and continued intermittently until 1874. Mines were closed and at times the fighting even threatened to engulf Penang.⁶ The Mantri, Ngah Ibrahim, and his small bodyguard was unable to cope with the situation; instead he preferred to side with the apparent victor rather than pursue the more dangerous course of suppressing the war. Even if the Mantri could have understood the implications of the growth of a large, powerful, alien community in his district by the early 1870's there was little he could have done; although he was still relatively wealthy as the district chief, - he was no more than nominal ruler of Larut.

5. Gullick, JMBRAS, Vol. XXVI, Pt. 3, pp. 23-4 and Winstedt and Wilkinson, JMBRAS, Vol. XII, Pt. 1, pp. 78-90. For accounts of secret societies in Larut, see Ibid., pp. 22-4, 28-32; V. Pucell, The Chinese in Malaya, (London, 1948), pp. 104-8; L. Comber, Chinese Secret Societies in Malaya, (Singapore, 1959), pp. 154-73 and W.A. Pickering, 'The Straits Settlements', IAQR, Vol. 1 Apr. 1896, pp. 98-100.

6. C.D. Cowan, Nineteenth Century Malaya, (London, 1961), pp. 112-4.

Although not directly related to the Larut disturbances, the Malay dynastic disputes are worth noting for their importance in later events. When Sultan Abdu'llah Muhammad of Perak died in 1857, he was succeeded by Sultan Ja'afar with Raja Ali as Raja Muda. By-passing Rajas Yusuf and Mat Amin, the two sons of Sultan Abdu'llah who distinguished themselves at the expense of popularity in civil wars furthering their father's reign, one Raja Ismail was appointed Raja Bendahara. As he was only linked with royalty through the maternal line, he was not considered truly of royal blood. Subsequently, when Ali became Sultan in 1865, Ismail remained Bendahara, while a son of Sultan Ja'affar, Abdu'llah, became Raja Muda.⁷

The weak reign of Sultan Ali gave rise to the growth of two factions of chiefs. One, located in the ulu (or up river) centered on Kuala Kangsar. Principal among those chiefs was Ismail, chief of the tin-rich Kinta valley who was supported by the Mantri of Larut. The hilir (or down river) faction, situated in the region of Kampong Bandar and Durian Sebatang, was grouped around the Laxamana, Mat Amin who controlled the tin-workings in Batang Pandang, and the Raja Muda, Abdu'llah. Although kinship ties tended to link the leading figures of both factions, these divisions were intensified at the death of

7. See Gullick, Indigenous Political Systems p. 11; Cowan, Nineteenth Century Malaya, p. 44; Winstedt & Wilkinson, JMBRAS, Vol. XII, Pt. 1, p. 93.

Sultan Ali in 1871.⁸ Custom demanded that the funeral of the old Sultan should be presided over by his successor. However, the Raja Muda, fearing the consequences of venturing into the ulu, failed to attend. In his absence the chiefs, upon the urging of the Mantri, who probably hoped to establish a precedent which would pave his way to succession, elected Ismail as Sultan. Abdu'llah, who clearly had the better claim, was then recognised as Sultan by the hilir chiefs. Although he had the best claim, Raja Yusuf, Sultan Abdu'llah Muhammad's eldest son, was once again set-aside.

Unlike Perak where one river provided the base for Malay settlement, Selangor was divided by five rivers which gave their names to the principal administrative districts of Bernam, Selangor, Klang, Langat and Lukut. By the 1870's however, the three rivers of Selangor, Langat and Lukut together formed the region of greatest wealth and population. Political power of the ruling hierarchy of Malays (of Bugis descent) rested on their control of these rivers and their ability to derive an income from the river traffic particularly from duties on provisions for the mines in the interior and tin and tin-ore exported for merchants in the Straits Settlements.

8. Cowan, Nineteenth Century Malaya, pp. 77-9; Winstedt, 'Negri Sembilan:- 'The History, Polity and Beliefs of the Nine States,' JMBRAS, Vol.XII, Pt. 3, (1934) p. 93-5.

After the middle of the nineteenth century, these tin-fields were worked more intensively by the Chinese. The old workings in Lukut were reopened while at Kanching in the Selangor river; others in the Klang and Ampang districts in the Klang valley were developed. In the Langat district small mines were also worked at Bukit Arang.⁹ The political effects of this expansion in the tin industry was more directly felt in Selangor than Perak Besar. Lucrative returns encouraged investors to support chiefs who were prepared to challenge the established heirarchy by basing their claims upon mythical or legitimate hereditary rights. Such was the case of the notorious Raja Mahdi, whose father had controlled Klang only to have it taken away by Sultan Muhammed in 1853. Raja Mahdi, claiming the valuable area as his hereditary right, took advantage of a quarrel between the Sultan (Abdu'l-Samad, 1857-98) and a group of Sumatrans - Menangkabau, Mandalings, and Rawangs - who inhabited the interior of Selangor, and seized the district.¹⁰

9. Won Lin Ken, 'The Malayan Tin Industry to 1914', p. 57; Gullick, Indigenous Political Systems, p. 24.

10. R.O. Winstedt, 'A History of Selangor,' JMBRAS, Vol.XII, Pt. 111, (1934), pp. 18-32; and J.M. Middlebrook, 'Yap Ah Loy,' JMBRAS, Vol.XXIV, Pt. 2, (1951), pp. 25-6.

In the civil war which followed, the ruling chiefs were ranged against Sumatran Malays; the Sultan's Viceroy, Tengku Zia'u'd-din,¹¹ and Yap Ah Loy,¹² the Capitan China of the Chinese in Ulu Klang, struggled to hold the Klang valley against Sumatrans under the leadership of Raja Mahdi. By the time the British Governor intervened, the war had involved Pahang and Kedah, affected the finances revenues of the Straits Settlements, and devastated and de-populated wide areas of central Selangor.¹³

Further ~~to~~ south the group of tiny states which today constitutes the Negri Sembilan were not linked in any formal union. To the east of the low range of hills which divided the area were the states of Jelebu, Sri Menati, Jempol, Terachi, Gunong Pasir, Ulu Muar and Inas, while to the west were located Sungai Ujong which shared its border with Selangor and Rambau and Tampin which bordered upon Malacca. As in Selangor, troubles centering on

11. Tengku Zia'u'd-din, younger brother of the Sultan of Kedah, married Tunku Chik, Sultan 'Abdul'l-Samad's eldest daughter. He was made Wakil Mutlak (or Viceroy) in 1868, a position he held until his retirement in 1878.

12. Yap Ah Loy became Capitan China in 1868 under the Sultan's surat Kuasa. At about the same time he secured de facto control over most of the mines in the interior and in 1870 joined with Tengku Zia'u'd-din to pacify the Klang valley. His authority was recognized by the first Residents and until 1880 he continued to exercise wide formal executive and judicial powers. He died in 1885.

13. Civil war is discussed in Middlebrook, JMBRAS, Vol. XXIV, Pt. 2, Cowan, Nineteenth Century Malaya, pp. 74-7; 103-9.

control of the Linggi River which served the mines in Sungai Ujong became involved with the struggle for political power. The Linggi had two branches - one serving the important mining area of Rasah in central Sungei Ujong; the other reaching from northern Rembau, converged with the western tributary at Simpang, to form a part of Malacca's western border.

The control of the river was the basic cause of the political struggles between the Malay chiefs in both Sungei Ujong and Rembau. In Sungai Ujong the de jure ruler, the Dato'Klana Putra, with the support of Zia'u'd-din, was with some difficulty maintaining control of the inland area of his small state against the ambitions of the Dato Shahbandar, who, supported by Raja Mahdi, controlled a lower section of the Linggi.¹⁴ In Rembau upon the death of the Dato'Penghulu in 1872, a succession dispute erupted between Haji Mustapha and the Dato'Perba (Haji Sahil) of that state.¹⁵ Each had support of his immediate neighbour in Sungai Ujong. The struggle in both States led to the constant interruption of the trade passing along the river and adversely affected the mining industry. Moreover the Straits officials, urged by the Chinese miners to intervene, became increasingly alarmed at the threat to

14. See Gullick, Indigenous Political Systems, p. 78; Cowan, Nineteenth Century Malaya, pp. 109-112, 192-194; J.M. Gullick, 'Sungie Ujong,' JMBRAS, Vol.XXII, Pt. 2, (1949), pp. 20ff; Winstedt, JMBRAS, Vol.XII, Pt. 111, pp. 68-69.

15. Cowan, Nineteen Century Malaya, p. 194.

Malacca's security and prosperity.¹⁶

In all three States of Perak, Selangor and Sungei Ujong, therefore, the pattern of dynastic disputes was intensified by the disruptive effects of an expanding tin industry. The disorders not only brought the mines to a stand still, but also threatened the British interests in the Straits of Malacca, interfering with the principal trade route to the east, inviting intervention from other European Powers and threatening the Settlements themselves.¹⁷

When Sir Andrew Clarke, Governor of the Straits Settlements in 1873, therefore, was charged by the Secretary of State with the task of reporting on the affairs of these States and of recommending the best means of restoring 'peace and order' and of securing 'protection' of those British subjects who had embarked on commercial ventures in the Malay States, Lord Kimberley especially wished to know whether it might be advisable to appoint a 'British Officer to reside' in any of the States. He added that such an appointment could only be made with the 'full consent' of the rulers; the expenses of these officers

16. Cowan, Nineteenth Century Malaya, p. 194.

17. See Cowan, Nineteenth Century Malaya, Chapt. 4 for the effects upon British imperial policy.

would have to be borne by the Straits Settlements.¹⁸ Once the Governor had carried out his investigations he took steps immediately, without consulting the Colonial Office, to settle matters in Perak.

Following two days of negotiations Clarke signed two documents on 20 January 1874. One was an agreement with the Chinese headmen involved in the Larut disputes, and the other was a treaty with the Malay chiefs. The former put an end to the disturbances between the Chinese factions in Larut and set up a commission of three Straits Settlements officers to settle disputed mining rights. The agreement with the Malay chiefs was the 'Pangkor Engagement'.¹⁹ Its preamble explained some of the reasons which compelled Britain to conclude such an agreement. The 'state of anarchy' and 'want of settled government' had endangered the 'large numbers of Chinese (who had been) employed and large sums of money invested in Tin mining in Perak by British subjects.' Such conditions made 'British trade and interests greatly suffer' and the peace of neighbouring settlements threatened. As an explanation of Britain's special

18. For the best analysis of the origin of the change of policy, see C.D. Cowan, Nineteenth Century Malaya, and D. MacIntyre, 'Britain's intervention in Malaya: the origin of Lord Kimberley's instructions to Sir Andrew Clarke in 1873,' JSEAH, Vol.2, No. 3, (1961).

19. 'Engagement entered into by the Chiefs of Perak at Pulo Pangkor,' is the full title given in W.G. Maxwell and W.S. Gibson, Treaties and Engagements Affecting the Malay States and Borneo, (London, 1924), p. 28.

interest, the preamble declared that 'Her Majesty's Government was bound by treaty stipulations to protect the said Kingdom and to assist its rulers.'²⁰ In fourteen articles it then went on to suggest a settlement of at least four important subjects: the dynastic disputes, the future administration of Perak, the clarification of boundaries and concession of territory to the Straits Settlements, and the settlement of the Larut disturbances. In the first four articles of the document a well-intentioned if somewhat misguided attempt was made to settle the dynastic dispute. 'Abdu'llah was recognized as Sultan, whereas Ismail with a pension and small territory was retired and permitted the title of 'Sultan Muda'.²¹

Articles three and four confirmed the appointment of 'Great Officers'

20. Britain's political paramountcy in the southern Malay Peninsula was implicitly recognized in the Anglo-Dutch Treaty of 1824 (Maxwell and Gibson, p. 8.) In 1825 a treaty with Siam assured the independence of Perak while Britain committed itself not to allow Selangor to attack or disturb Perak. (Ibid., p. 77.) while Perak and Selangor pledged in separate treaties not to attack one another. (Ibid., pp. 22 and 32.) In the following year the East India Company further extended its 'protection' to Perak, the latter agreeing neither to send the bunga mas - or token of vassalage - to Siam nor communicate with Selangor or Siam, (Ibid., p. 24.) Although this treaty was not formally ratified by the Company, it was acted upon in 1844 and 1853 and is apparently the one referred to in the preamble of the Pangkor Engagement. (Mills, L.A. 'British Malaya, 1824-1867,' (Ed. M. Turnbull) JMBRAS, Vol. XXXIII Pt. 3, 1960-1959, pp. 194, 209)

21. A title used by the last Sultan of Malacca and preserved in Perak. It stood at times for heir-presumptive and may have denoted great honour than the title 'Raja Muda.' Ismail was the last to be so styled; a consolation title given at the suggestion of the Laxamana Muhammand Amin. (Winstedt and Wilkinson, JMBRAS, Vol. XII, Pt. 1, p. 134.)

made by Ismail and the position of the Mantri as chief of Larut. The most important part of the treaty, for present purpose, however, was that covered by articles five to ~~six~~^{ten}. These articles, which aimed at giving Perak a better system of administration, dealt with two interrelated subjects: the appointment of a British Resident and the collection of revenue.

Foremost in the attainment of better administration was the creation of the post of 'Resident'.²² It was to be filled by a British Officer stationed at Perak who would be assisted by an

22. The origin of the name is probably derived from the Indian example. On several occasions Straits Settlement officials with Indian experience recommended the appointment of such an officer to reside in the Malay states. The earliest mention appeared in a Report of the 'Committee on Native States,' dated 19 May, 1871. The Committee consisted of three members, one of whom, Major F. MacNair, the Colonial Engineer who had served in the Indian Army, put forward the idea. The Report suggested that the officer should reside in the state and be paid from state revenue. Besides advising on general administration, he would act as a link between the Malay State and Straits Government. (Report, an Officer Administering the Government to Sec. State, 3 June 1871, CO/273/47.) In a letter to Governor Ord, the acting Lieutenant-Governor of Penang, G.W.R. Campbell, (seconded Ceylon Officer) pressed for the 'appointment of a Resident or Political Officer for certain Malay States' (Inclosure 3 in No.12, Governor to Sec. State, 11 Nov. 1872, CO 809/1.) And again, in his annual Report he urged the appointment of a 'resident political officer and pointed to the precedence in India. Most native-ruled States in and around India have such officers, and the value of their influence is unquestionable.' (Extract from Campbell's Report on the Blue Book for Penang and Province Wellesley for 1872, in CO. 273/74, 28 June 1873.) All these officers understood the role of such a person to be purely advisory. However, A.E. Anson, in forwarding the Report of the 'Committee on Native Affairs' considered the difficulties such an officer would experience in the chaotic conditions of the Malay States and preferred the appointment of a 'Political Agent.' (See Cowan, Nineteenth Century Malaya, p. 83.) For an account of the use of Residents as a means for maintaining order and stabilizing frontiers, see W.D. McIntyre, 'British Policy in West Africa, the Malay Peninsula and the South Pacific during the Colonial Secretaryship of Lord Kimberly and Lord Carnarvon,' Unpublished Ph.D. thesis, 1959, University of London, p. 396.

officer endowed with similar powers who lived at Larut.²³ The Sultan was to provide the Resident with a 'suitable residence' and the costs of both officers and their establishments were to be determined by the Straits Settlements and form a 'first charge on the Revenue of Perak'.²⁴ The powers of the Resident were stated generally in article six, which declared that his 'advice must be asked and acted upon on all questions other than those touching Malay Religion and Custom!' Moreover, articles ten asserted that the 'general administration of the country' was to be determined by the Resident's advice, and it singles out 'the collection of all Revenues' for special attention.

This and two other articles are concerned with the collection of revenue. The importance given the subject in the Engagement suggests that the control of revenue was considered of vital importance if successful administration was to be secured in Perak. Sir Andrew, in defending his action at Pangkor, deplored the 'perfect absence of all system' in the collection of revenue and held that in so far

23. Clarke's instructions from the Secretary of State asked him to consider whether it would 'be advisable to appoint a British Officer to reside in any of the states.' Clarke's view was that 'nothing but the residence of a British officer can bring about in any of these States that pacification which is so greatly needed.' (Governor to Sec. State, 24 Feb. 1874, CO. 809/1.)

24. Clarke's instructions held that expenses connected with these appointments would be defrayed by the Straits Government.

as bringing about a good system of government this would be about 'the most important portion' of the Resident's duties.²⁵ It is not difficult, therefore, to understand articles five and ten, which declared that all revenue was to be collected and all appointments made (in the name of the Sultan), as provisions for introducing a centralized, uniform system of revenue collection. With this in mind, the relationship of article nine to five and ten is more apparent. It called for a civil list regulating the incomes of the Sultan, Bandahara, Mantri and 'other officers' which would be drawn from the revenues after meeting the costs of the Resident and his establishment. These articles, therefore, evidently indicate that the important chiefs were to lose their power as arbitrary collectors of revenue and receive regular incomes according to their rank. Thus, the state, freed from the whims of arbitrary taxation as applied by regional chiefs, would be free to impose a uniform system of control over the state's revenue and expenditure.

While such conclusions were not explicit, Clarke appears to have been in no doubt as to the interpretation of the Engagement. Indeed, in a letter to Abdu'llah, 22 April 1875, he reminded the Sultan that he and the other Perak chiefs 'bound themselves not to collect any taxes whatever, such taxes and all revenue being entirely in

25. Governor to Sec. State, 24 Feb. 1874, *CO* 809/1.

the hands of the British Resident.'²⁶ Although these articles failed to equip the Resident with executive authority, the clause, 'advice must be asked and acted upon,' coupled with articles five and ten, could give him the opportunity to effectively control the country. The operative phrase is, obviously, 'and acted upon.'²⁷ Viewed in this way, the only limitation of his power to advise was the prohibition from advising on questions 'touching Malay Religion and Custom.' Islam, as practised in the Malay Peninsula at that time, could give little trouble, but custom (adat) was to prove a more comprehensive term than the drafters of the Engagement imagined.²⁸

Moreover, there appears to have been a Malay translation of the Engagement which varied in at least one important respect. The difference between the English and Malay versions is apparent in

26. Enquiry as to the Complicity of Chiefs in the Perak Outrage, Précis of Evidence, enclosure 5 in Governor to Sec. State, 14 Dec. 1876, CO 273/86, p.10. Hereafter referred to as Précis.

27. Cowan, Nineteenth Century Malaya, p. 188 Swettenham held that 'It is evident that the collection and control of all revenue, and the tendering of advice which must be acted upon, cover all executive authority.' (F.A. Swettenham, The Real Malay, (London, 1899) p. 21.)

28. Wilkinson lists some dozen interpretations of adat, of which one should be cited here: 'common law or customary in general whether local, or as divided by Malay jurists into: the law of the autocratic sultanate (adat temenggong); the democratic (adat perpatah); (adat lembaga); and loosely all law.' (R.J. Wilkinson, A Malay-English Dictionary. (Greece, 1932).)/

the contrast between the sixth article:

English Version

VI. Sixth.--That the Sultan receive and provide a suitable residence for a British Officer to be called Resident, who shall be accredited to his Court, and whose advice must be asked and acted upon on all questions other than those touching Malay Religion and Custom.

Malay Version (translated)

Item 6--The Sultan should accept and build a suitable residential house for one officer who is under the British Government whose title shall be British Resident of Perak State and who is to be trusted by the British Government. The Sultan of Perak shall have to consult with him on all matters and the working of Perak State except that he cannot interfere with Muslem religious affairs and Malay custom. 29

The most significant difference is in the omission of the compelling phrase, 'and acted upon.' The effect on the force of article ten hardly needs to be pointed out, for the failure to include these words seriously limited the authority of the Resident's de jure advice.

If the articles concerning the powers of the Resident are disregarded, the Engagement is a lucid document. Nevertheless, in practice it failed to settle the succession dispute. This weakness, and the vagueness of the definition of the Resident's

29. For the purpose of this thesis the writer accepts the validity of this translation as a fair copy of the original. The Malay version was uncovered by M.A. Mallal in the course of his research on J.W.W. Birch. (M.A. Mallal, 'J.W.W. Birch: Causes of his Assassination,' unpublished M.A. thesis, 1952, University of Malaya, and cited in Parkinson, British Intervention in Malaya, 1867-1877, (Singapore, 1960) p. 137. The original Malay version was by Frank Swettenham and Munshi Mohamad Syed. (F.A. Swettenham, Footprints in Malaya, (London, 1941) p. 33.) No Malay version can be found in the Public Records Office.

powers, can perhaps be attributed to Clarke's incomplete information and his desire for quick settlement.³⁰ No less significant was the circumstance in which the treaty was negotiated. Sir Andrew, in arranging a settlement, had exceeded his instructions that he should merely report.³¹ The need to present the document as an agreement among the chiefs on purely internal state-matters was therefore pressing. Hence, to have endowed the Resident with more explicit and precise authority - thereby involving Britain too deeply in Perak affairs - might well have brought a complete rejection of his settlement by the Colonial Office. In a speech to the Straits Legislative Council and in a letter to Charles Cox at the Colonial Office, he urged the view that he had made 'no bargain or accepted no obligation' and that the Engagement was 'entered into solely by the Chiefs of Perak, but I am only a witness.'³²

The document, it is true, bore the signature only of the chiefs, and Clarke's as 'witness.' The case might be made that, apart from articles eleven and twelve which dealt with boundary questions, the Engagement was nothing more than an agreement between chiefs. The Colonial Office, however, was startled by this suggestion,

30. Parkinson, op. cit., pp. 138-40.

31. In addition to exceeding his instructions by signing the treaty, he committed a breach of standing orders laid down after Governor Ord's abortive Kedah Treaty, 1868. (Cowan, Nineteenth Century Malaya, p. 202.)

32. Minute by Cox, Governor to Sec. State, 16 June 1874, CO 273/76.

believing it was a treaty in the broadest sense of the word - a view the Governor was pleased to accept. If Britain was not a party to the treaty, then how was Her Majesty's Government to enforce the acceptance of Residents, the boundary decisions, and the collection of expenses? Clearly, the Engagement would amount to so much 'waste paper!'³³ In reply, the Secretary of State instructed Clarke to inform the Perak Chiefs that

Her Majesty's Government will look to the exact fulfillment of the pledges which have now been voluntarily given, and will hold responsible those who violate the engagement which (has been) solemnly agreed upon. ³⁴

These instructions formed the basis of a Proclamation issued by the Governor dated 2 November 1875.

Following the success in Perak, Clarke next turned his attention to Selangor and Sungai Ujong. In Selangor using as a pretext a case of piracy which had been committed the previous November, Sir Andrew was able to reconcile the Sultan, 'Abdu'l-Samad and his Viceroy, Zia'u'd-din.³⁶ Six months later, in August, after he had gained approval for his proceedings at Pangkor, Clarke sent Frank Swettenham to reside with Sultan of Selangor at Langat, a move designed to make good the gains of February.³⁷ Swettenham was so

33. Minute by Cox, Governor to Sec. State, 16 June 1874, CO 273/76.

34. Sec. State to Governor, 4 Sept. 1874, C.IIII.

35. Cowan, op. cit., p. 190.

36. Ibid., pp. 206-7.

37. Maxwell and Gibson, ^{Treaties}~~TREATIES~~, p. 35.

successful in winning the confidence of the ruler that, in reply to a letter from the Governor, 'Abdu'l-Samad agreed to Clarke's assistance in making 'arrangements for opening my country and collecting it revenue.'³⁸ He also agreed to pay Swettenham a salary of \$1000 per mensem and provide him with a residence. Without declaring in a treaty the form this assistance might take, the Sultan enabled the Governor to introduce a Resident. A Proclamation was then published in the Straits Settlements on 25 January 1875 by the Governor announcing the Sultan's request.³⁸ Two British officers were subsequently appointed to Selangor: J.G. Davidson as senior officer at Klang, and Swettenham as his assistant to remain at Langat with the Sultan. Thus, simply by an executive order, British officers were placed in Selangor. Their titles were not given and their powers were undefined. No mention was made of earlier treaties, or of Britain's control of the state's external relations.

The Sungai Ujong disputes were settled in two stages, In April 1874 the Governor sided, as he had in Perak and Selangor, with one of the disputants, the Dato'Klana Putra, in order to keep the Linggi River open and prevent the Chinese miners from taking sides in the civil war. The decision was recorded in a treaty with the

38. Ibid., p. 36.

Dato' and his nominal vassal, the Dato'Muda of Linggi. The Dato'Klana entered into a \$50,000 bond with Britain to keep the river open and charge 'fair and reasonable duties and taxes' down to Simpan. In return, he gained the 'moral and material guarantee and protection of the British Government.'³⁹

Clarke's gamble was aimed at establishing the Dato'Klana as de facto ruler as well as de jure ruler of Sungai Ujong. However by November the struggle between the Klana and the Dato'Shahbandar had resumed; the Klana tried to drive the Dato'Shahbandar from the state. His attack failed, and the Governor was forced to enter the field to rescue his man. The intervention drove the Dato'Shahbandar from the state and left the Klana the sole ruler of the tiny country. Quite shaken by the experience, the Dato'Klana welcomed a resident British officer in the person of Captain Tatham. Sungai Ujong, therefore, by virtue of the April Treaty, became a protected state, and through an executive act also gained a British Resident.⁴⁰

As these events suggest, the Pangkor Engagement marked an important departure in British colonial policy in the Malay States. British officers were sent to reside in a Malay State in order to stabilize a political frontier and introduce 'good' government, and the political integrity of the sultanate was preserved by the

39. Ibid., p. 37.

40. Cowan, Nineteenth Century Malaya, pp. 192-7; 206-10; and Governor to Sec. State, 29 Dec. 1874, C. 1320.

extension of British 'protection'. The Pangkor Engagement, therefore, though its important articles were never exactly duplicated, became the prescription for extending Britain's control to other Malay States. The elements of this formula were the extension of British protection^{in return} for the relinquishment by^{the} rulers^{of} their control of their external affairs; the appointment of a resident British officer with authority to give influential 'advice' to the ruler except upon matters connected with Islam or adat; and the delegation of authority to this officer to control the collection and expenditure of revenue. Some combination of these elements was expressed either in a treaty, diplomatic note, or proclamation with the introduction of British Residents to all the States covered in this study. It remains, therefore, only to indicate how these same devices of control were extended to the rest of the Negri Sembilan and Pahang.

In a series of treaties between 1876 and 1895 the cluster of small states behind Malacca were fused into one political unit of Negri Sembilan and brought under the direct control of a British Resident. Sir William Jervois, Clarke's successor, tried to find some way of combining in order to settle the contest for the title of the Yang di-pertuan of Sri Menanti and so stabilize Malacca's hinterland. In late 1875 Jervois had police posts in the area at Sri Menanti, Terachi and Ulu Muar. When these were attacked in April 1876 he proposed to the Colonial Office bringing these states together under

the headship of a 'Malay Capitan', instead of a Yang di-pertuan and appointing a resident British officer. British protection would also be extended to the confederation.⁴¹ The proposal was rejected, but the Secretary of State approved Jervois' subsequent arrangement whereby Tengku Antar succeeded as Yam Tuan of Sri Menanti, 'having authority over' the constituent states of the confederation of Sri Menanti, Jempol, Terachi, Gunong Pasir, Ulu Muar, Inas and Johol.⁴² The chiefs agreed, moreover, to refer their disputes to the Maharaja of Johore.⁴³

Sir Frederick Weld took the matter up again in the 1880's. He successfully advocated to the Colonial Office the gradual combination of these territories leading to the appointment of the resident British official.⁴⁴ A series of treaties negotiated between 1883 and 1887 on the one hand excluded the Maharaja of Johore's disruptive influence from these States and on the other laid the foundation for combining them in some wider union.

41. Jervois to Sec. State, 20 Apr. 1876, C. 1512, p. 86; 13 May 1876, C. 1709, p. 3; CO 809/10, p. 29.

42. Sec. State to Jervois, 19 Aug. 1876, CO 809/10, p. 73, C. 1709, p. 41.

43. Maxwell and Gibson, Treaties, pp. 60-1.

44. Weld to Sec. State, 7 Apr. 1883, CO 273/120. For a full discussion of these events see E. Thio, 'British Policy in the Malay Peninsula, 1880-1909,' unpublished Ph.D. thesis, 1956, University of London.

In 1883 he signed treaties with Rembau and Jelebu which made the Governor the sole arbiter of internal disputes in those States. In Jelebu he intervened at the request of the chiefs to arbitrate in a dispute between the Yam Tuan and the Dato' Penghulu. Although he believed that the prosperity of Sungai Ujong depended upon the Jelebu's conjectured mineral wealth, he refused the Dato' Penghulu's request for a Resident,⁴⁵ but arranged that the Resident of Sungai Ujong should 'advise and assist under the direction of the Government both in matters of administration and revenue.' Expenditure on the opening of roads to mines and 'for the maintenance of government and order or for any other purposes' was to form a first claim upon the State's revenue.⁴⁶ Similarly in Rembau he intervened in the dispute between the Dato' Penghulu and the chiefs by deposing the former who was supported by the Maharaja of Johore and approving the election of a successor.⁴⁷ These developments were set down in a treaty in 1883 in which Rembau agreed to refer all future disputes to the Governor.⁴⁸

45. Thio, op. cit., p. 65.

46. Maxwell and Gibson, Treaties, pp. 53-5.

47. Thio, op. cit., p. 56-61; See account in Alice, Lady Lovat, The Life of Sir Frederick Weld, (London, 1914) pp. 361-363.

48. Maxwell and Gibson, Treaties, pp. 51-2.

In 1885 Weld began to extend British administrative control to these States with the appointment of two 'Collectors and Magistrates', one to Jelebu who was to be responsible to the Resident of Sungai Ujong⁴⁹ and the other for the Sri Menanti confederation responsible to the Resident Councillor at Malacca and establishing himself at Kuala Pilah.⁵⁰ The appointment of the officer to Jelebu was made under the 1883 agreement, but in a further agreement in 1886 it was laid down that this officer should have the authority for 'the issuing of Grants to occupy State lands... and also the collection of land and other Revenue.' He was also given the power to 'ajudicate in Civil and Criminal cases,' exclusive of Islamic law. Furthermore, Jelebu agreed to grant no concessions to non-British Europeans without Britain's consent and as well surrender the conduct of its external relations to Britain.⁵¹

No comparable authority was extended immediately to the Collector and Magistrate at Kuala Pilah. In 1884 the Dato' Penghulu

49. Sungei Ujong AR, 1885, p. 7.

50. For at least two years before the appointment of the first Collector and Magistrate a 'Clerk of Works' supervised the expenditure of loans from the Straits Settlements on road building. This same officer - L.J. Cazalas - was the first Collector. R.N. Bland succeeded the following June and Martin Lister followed him in December until 27 October, 1887 when the title was changed to 'Superintendent'. 'Report by the Resident Councillor of Malacca upon the Expenditure of the Advances made to the Native States adjoining Malacca,' SSLC Paper, Sept. 1886, and enclosed in Weld to State Sec., 24 Dec. 1886, CO 273/141.)

51. Maxwell and Gibson, Treaties, pp. 53-5.

of Johol had entered into a treaty with the Resident Councillor of Malacca which entrusted to a British officer 'the government of our country of Johol,' as well as the right to control the collection of revenue. This agreement was never fully implemented, the Resident Councillor merely visiting Johol from time to time.⁵² In 1886 the Sri Menanti in almost identical terms to the Jelebu agreement of 1886 surrendered its control of external affairs and promised to refer all internal disputes to the Governor rather than the Maharaja of Johore as in the past.⁵³ No explicit authority to take part in the administration, however, was given to the Collector and Magistrate until 1889.

In the meantime, in 1887, Weld entered into an agreement with Rembau which enabled him to appoint a resident British officer to that State. It declared that this officer, to be chosen by the

52. This treaty is not included in Maxwell and Gibson. It can be found as enclosure in OAG to Sec. State, 1 Apr. 1884 CO 273/127.

53. Maxwell and Gibson, Treaties, pp. 61-2. This treaty was modelled upon the Johore Treaty of 1885. (Ibid., pp. 132-3.) See also article III of 'Agreement with Jelebu,' 1886 (Ibid., p. 55.) The version of the 'Agreement with Sri Menanti' given in Maxwell and Gibson, is the amended version of the one signed in April 1886, the words used in the Johore Treaty of 1885 'in the preservation of peace and settled Government' replaced 'and in joint defence of those territories from External hostile attacks' (Weld to Sec. State 15 July 1886, CO 273/140; Weld to Sec. State, 13 July 1887, CO 273/145.)

Governor, was to 'assist in the administration of the State,' and added that the control of revenue, exclusive of that derived from waste lands, was to be 'absolutely left to the Officer.' Moreover, the British officer was to receive the assistance of the Dato' Penghulu and Chiefs in Council on 'all State matters of importance' and questions of Revenue and Police administration.⁵⁴ These chiefs, deprived of revenue, were to be granted one-third of the total State revenue.

Having persuaded Rembau to allow its internal affairs to be controlled by a British officer - in fact the Superintendent of Sri Menanti - it was easier to combine Rembau, Tampin and Sri Menanti in some larger union and give formal expression to the Superintendent's situation. Under an agreement signed by Weld's successor, Sir Cecil Clementi Smith, in 1889, Britain extended her 'protection' to a 'Confederation' of these three States to be known as 'Negri Sembilan.'⁵⁵ The rulers agreed to accept the 'assistance'

54. Maxwell and Gibson, Treaties, pp. 55-7.

55. Maxwell and Gibson, Treaties, p. 63. Article 1 of this agreement lists the constituent members of this confederation as Sri Menanti, the Yam Tuan having jurisdiction over Johol (including Gemencheh), Inas, Ulu Muar, Jempol, Gunong Pasir, and Terachi, as well as Rembau and Tampin. Nevertheless, the signatories included the Dato' Penghulu of Johol. To distinguish between this confederation and the 1895 Negri Sembilan confederation administrators after 1895 described the former as the 'old' Negri Sembilan. This convention is continued in this work.

of a British Resident in the administration of the Confederation. Although it was assumed by the Resident that executive powers were extended to him under this clause, it failed in fact to do so. Moreover, while he was charged with assisting in the government of the Confederation as a whole, an ambiguous passage in article three declared that such an arrangement did not 'imply that any one ruler should exercise any other power or authority in respect of any States than that which he now possesses.'⁵⁶ A strict interpretation of this passage would have permitted the establishment of the loosest kind of confederation and inhibited the Resident's efforts to establish a central single administration for the whole union. In practice, the Resident ignored this passage, administering the Confederation as a single unit.

With the conclusion of this treaty there was one Resident for the Confederation of Negri Sembilan and one for Sungai Ujong and Jelebu.⁵⁷ The combination of all these states, which Weld had looked to in 1887,⁵⁸ came about against the background of discussion for a wide federation of Perak, Selangor and Pahang. In 1895, therefore, the two principal administrative units were brought together into one large confederation under the traditional name of

56. Ibid.

57. Sungai Ujong included Lukut and Sungai Raya, formerly districts of Selangor, which were ceded to it in 1878 (Maxwell and Gibson, Treaties, pp. 212-3.)

58. Weld to Sec. State, 11 Oct. 1887, CO 273/148.

Negri Sembilan. The five signatories, the Yam Tuan of Sri Menanti and rulers of Johol, Sungai Ujong, Jelebu and Rembau, agreed to accept the 'assistance' of a British Resident and 'to follow his advice in all matters of administration other than those touching the Mohammeden religion.'⁵⁹ As in the old Negri Sembilan Treaty of 1889, the clause limiting a ruler's authority to his own State was repeated and the exact relationship between the constituent States was left undetermined.

Pahang, the fourth State in this study, is the largest State in the Peninsula being nearly twice as large as Perak. Like Perak its principal physical feature is a river, the Pahang River and its many tributaries. However, unlike the latter State before the 1880's, Pahang had experienced a high degree of political stability under the Bendahara Wan Ahmad. Having seized power in 1863,⁶⁰ Wan Ahmad displayed a considerable measure of political skill in securing the support of the important uly chiefs which made it possible for him to exert a great²⁹ degree of effective control in his state than did either the rulers of Perak or Selangor before British intervention. However, his authority began to weaken during the 1880's as concession speculators pursued their disruptive activities in the interior of Pahang and a dissident faction challenged his assumption

59. Maxwell and Gibson, Treaties, p. 64.

60. See W. Linehan, 'History of Pahang,' JMBRAS, Vol.XIV, Pt. II, (1936), pp. 65-89.

of the title of Sultan in 1882. This opposition was centered about Engku Muda Mansur who was dissatisfied with his share of the revenue and removal as heir-apparent for Wan Ahmand's son.⁶¹ Among Straits official, the ruler's reckless granting of concessions provoked the concern for the economic and political stability of the State. Weld and his successor Clementi Smith, who were both convinced of the mineral wealth of Pahang, therefore, sought to introduce a Resident. Using the internal disputes as a pretext Weld opened negotiations with the ruler for the appointment of such an officer.⁶²

The introduction of a Resident was implemented in two steps. The first culminated in the signing of the 1887 treaty with Britain. In an earlier treaty between Pahang and Johore⁶³ both parties agreed to carry on foreign relations only with the consent of Britain, but the 1887 agreement placed Pahang's external affairs under the 'guidance and control of Her Majesty's Government.'⁶⁴ Article one bound both Britain and Pahang to the 'joint defence' of their territories from 'external hostile attack,' while article five repeated the undertaking of the British Government to 'protect the Government and territory of Pahang from any hostile attacks.'

61. Ibid, p. 100-106.

62. See Thio, op. cit., Chapt. II, and, E. Thio, 'The extension of British control to Pahang,' JMBRAS, Vol. 30, Pt. 1, (1957), pp. 46-74.

63. Maxwell and Gibson, Treaties, p. 209-11.

64. Maxwell and Gibson, Treaties, pp. 66-8. See also the Johore Treaty, 1885, Ibid., p. 132. But for names and places the treaties are identical. The only major difference reflects the status given the Sultan of Johore in Britain. The treaty was signed by the Secretary of State, while the Pahang treaty was signed by the Governor.

Provision was also made to enable the Straits Settlements Government, at their convenience to appoint a 'British Officer as Agent to live within the State of Pahang having functions similar to those of a Consular Officer.'⁶⁵ He was given no explicit right to interfere in the internal matters, but as Hugh Clifford, the first Agent, showed it was possible for the Consular Officer to consider the internal state affairs as coincidental with his own country's interest in the State.

The second stage ended in the appointment of a British Resident in 1888. Clifford's failure to introduce the administrative reforms necessary to achieve the type of government desirable for protecting the economic development of the state prompted a demand for some executive powers. Seizing upon the pretext of the murder of a Chinese British subject by one of Ahmad's followers the Agent persuaded the Sultan, under great pressure to write a letter to the Governor, Sir Cecil Clementi Smith, requesting a British officer who 'may assist us in matters relating to the Government of our country,' based upon 'a similar system to that now existing in the Malay States

65. The duties of a Consular Officer were apparently never defined. However, they were probably thought to be comparable to Satow's definition of the functions of a diplomatic agent: 'to watch over the maintenance of good relations, to protect the interests of his countrymen, and to report to his government on all matters of importance,' (Satow, Sir Ernest, A Guide to Diplomatic Practice, p. 115.) *Ed. Sir N. Bland, (London, 1955) p. 115.*

under English protection.'⁶⁶ He added a request that the British Government not interfere 'with the old customs of our country' and 'all matters relating to our religion.' A brief fortnight later, the Sultan's request was granted. In a letter dated 8 September 1888, the Governor agreed to send a 'British Resident' and expressed the wish that the Sultan treat the Resident with 'entire frankness' by 'taking him into full confidence' on all public matters and 'loyally carrying out the arrangement which has now been finally made.'⁶⁷ Nowhere is the Sultan's request for the protection of the old customs and religion mentioned.⁶⁸

By 1895, therefore, the four 'Protected Native States' de jure were the recipients of some measure of British protection. Each possessed a British Resident who held their position in a variety of ways. Similarly, de jure the Residents' ability to interfere in the internal affairs of these states also differed. Both Perak and Negri Sembilan accepted Residents whose 'advice' they pledged themselves to follow, while Selangor and Pahang received Residents who were to 'assist' in the administration of their States. But

66. Maxwell and Gibson, Treaties, p. 68.

67. Ibid. p. 69.

68. The Sultan demanded and got a reply in 1900 that such matters would not be interfered with. (J.A. Swettenham to Sec. State, 17 May 1900, CO 273/261 and Smith to Lucas, 31 July 1900, CO 273/266.)

while the forms and language may have varied for the appointment of Residents, they all contained elements of the model set out in the Pangkor Engagement. Indeed, the Pangkor Engagement became the prescription for Resident rule. Thus, it is not surprising to find that the first Resident to Pahang, upon assuming his post, gave the Sultan a copy of the 'operative clauses' of that treaty to help him understand the terms on which 'the residential system' was introduced into the neighbouring States of Perak, Selangor and Negri Sembilan.⁶⁹

69. Rodger to Col. Sec., 13 Oct. 1888, enclosed in Smith to Sec. State, 15 Oct. 1888, CO 273/155.

CHAPTER II

SOME FACTORS GOVERNING THE NATURE OF RESIDENT RULE.

A few months after the signing of the Pangkor Engagement, Lord Carnarvon wrote privately to Sir Andrew Clarke approving the action taken in Perak. At the same time he warned Clarke of the history of the Indian 'Residents', pointing out that it was 'too recent and marked not to serve to throw light upon similar appointments in the Peninsula;'¹ indeed, he thought the Indian experience ought to put the Governor on his guard lest 'things and persons and political combinations' should draw the Residents further into the affairs of the Malay States than he wished. It was a timely warning. In the flurry of settling matters in Perak, Selangor and Sungai Ujong, no one appears to have given much thought to the way in which the Resident's advice would be implemented. The immediate and pressing problem was the pacification of Larut and the settlement of the dynastic dispute in the Perak sultanate. The Pangkor Engagement, therefore, contains specific references to these problems and sets out the areas in which the advice of the Resident should be sought. It was silent, however, on the way in which this advice might be effected. This was an important omission and it appears that some important questions were never asked. For instance, did the authority of a ruler extend beyond his own district throughout the entire State? If so, what

1. Carnarvon to Clarke, 27 May 1874, Carnarvon Papers, PRO 30/6/40.

kind of administrative machine existed for executing his orders?
If not, how were district chiefs to be persuaded to carry out the ruler's instructions?

In explaining his policy to the Secretary of State Clarke failed to give a clear answer to these questions, although he did describe the Resident's task as 'assisting the legitimate Rulers' and teaching them 'the great and yet simple, principles of good government.'² But the aspect of government about which one would have expected the Governor to have put forward detailed proposals - the collection and expenditure of the country's revenue - he had little to say. He did describe this subject as 'the most important portion' of the Resident's duties, because in this area of Malay rule he had seen the most serious abuses. The Resident's task, he explained, was to 'check' these abuses and to 'induce the Sultan to select proper men for the collection of revenue.'³ In general it would appear that Clarke and as well the Colonial Office officials understood the function of the Resident as giving advice which would be implemented by the ruler, the Resident not acting in an executive capacity.⁴ Yet, within the twenty months between the

2. Clarke to Sec. State, 24th Feb. 1874, CO 809/1.

3. Ibid.

4. The discussion in the Colonial Office about the appointment of a Resident suggests this conclusion. See Anson to Sec. State, 10 July, 1873, CO 273/67.

signing of the Engagement and the murder of James Birch, the first Resident of Perak, the function of the Resident was to change dramatically and the circumstances which brought about this change profoundly affected the nature of the Residents' role in the government of the Malay States.

ii

In Sungai Ujong the position of the Resident in the governance of this tiny State was decided before Captain W.J.J. Tatham was appointed temporary Assistant Resident in December 1874. The conclusion of the April 1874 agreement had forced into the open the real position of the Dato' Klana Putra; he was de jure ruler, but without sufficient power to make his authority effective throughout Sungai Ujong. The more powerful chief was the Dato' Shahbandar who refused to abide by the conditions of the treaty on the reasonable grounds that he had not been consulted.⁵ An arthritic old man of eighty years, the Dato' Shahbandar in 1874 controlled the districts of Rantan, Labu, Rassa and half of Seremban. The Dato' Klana's territory included the other half of Seremban as well as Panti, Ampangan, Lenggang and Setul.⁶ However, the Dato' Shahbandar was situated down-stream from the Dato' Klana

5. The Governor reported that the Dato' Shahbandar at first agreed to sign the treaty but later changed his mind. (Clarke to Sec. State, 29 Dec. 1874, C 1320, p. 8.) Another version, written some years later by a chief of Sungai Ujong, relates that the Shahbandar refused to sign the treaty on the grounds that it was unconstitutional as Sungai Ujong was a vassal of the Yam Tuan of Sri Mentanti. (R.N. Bland, 'Aturan Sungei Ujong,' JSBRAS, No. 28, (1895), pp. 63-4.)

6. Gullick, JMBRAS, Vol. XXII, Pt. 2, p. 24.

and at Rassa he was able to control and levy taxes on all traffic passing along the Linggi River.⁷ Moreover, most of the tin mines were located in his part of Sungai Ujong. By 1874 something in excess of ten thousand Chinese were working the hundred small mines situated between Rasah and Seremban. Residing in small, stockaded villages under their own headmen the Chinese were grouped by clan under one of three Capitan Chinas. These Capitans controlled the revenue farms (on gambling, opium, spirit and pawnbroking) and organised the mining operations.⁸ The Dato' Shahbandar's relationship to the Chinese miners was no doubt the same as that in other parts of the Peninsula. In return for his permission to work the mine field in his district he received a royalty on every bhara of tin exported from Sungai Ujong. His

7. Duties were levied at Rassa on botas, rice, opium, and exported tin and a poll-tax on all Chinese. (Pickering Journal, pp. 3,5 and 11-2.) Much of the information about Sungai Ujong at this time is based on a journal kept by W.A. Pickering during his stay in Sungai Ujong between October and November 1874, and despatches and enclosures in Parliamentary Paper C. 1320. Pickering was then an interpreter in the Straits Settlements civil service which he had joined in 1872. Previously he had served in the mercantile Marine Service during 1856-62, and four years in the Chinese Imperial Maritime Customs before joining a commercial house in Formosa in 1886. In 1877 he became the first Protector of Chinese in the Straits Settlements and retired in 1890. (Who Was Who, 1897-1918, London.)

8. The Chinese were required to pay a poll-tax and while they claimed about 5000 men to the Shahbandar, according to Pickering they only reported about a half to two-thirds of the real number. (Pickering Journal, p.3)

wealth and influence, therefore, was considerable.⁹ He commanded a larger following of Malays than the Dato' Klana and the support of most of the Chinese.

The Dato' Klana Putra was less wealthy and exercised no influence beyond his own district. Residing at Ampangan, several miles upstream from Rasah, he derived little revenue from river traffic and a sum much smaller than that gained by the Dato' Shahbandar from the few mines worked in his district.¹⁰ His want of influence may also have been attributed to the fact that he had earned the reputation of being a clever politician, but as ruler he failed to prove himself a strong leader.¹² His succession to the title had also been opposed by some because he had married into the waris-di-darat, one of the two principal clans, and

9. Pickering described him as possessing great wealth and reported a rumour which held that the Shahbandar had ~~£~~300,000 of tin buried in the jungle. (Pickering Journal pp. 3 and 7.) Later about ~~£~~180,000 of tin was uncovered by Dunlop. (Dunlop to Clarke, 29 Dec. 1874 enclosed in Clarke to Sec. State, 29 Dec. 1874, C. 1320, p. 48.)

10. Pickering reported that the Klana received about ~~£~~10,000 per annum in revenue. (Pickering Journal, p. 5.)

11. Sendang died in 3 Dec. 1872 and Syed 'Abdu'r-Rahman reported his own succession to the Governor on 27 March 1873. (T. Braddell memo. enclosed in Clarke to Sec. State, 29 Dec. 1874, C. 1320, pp. 29-30.)

12. Pickering Journal, p. 5.

because he was a syed.¹³ Moreover, there were some who argued that the constitution required the Dato' Klana to consult the Dato' Shahbandar on all important matters affecting Sungai Ujong. In the Shahbandar's opinion, this convention had been broken by the Klana when he concluded the 1874 treaty and therefore he steadfastly refused to recognise the agreement.¹⁴

Acutely aware of his weak position, the Dato' Klana Putra asked for a Resident during August and September in 1874, claiming that the Shahbandar had prevented him from raising the Union Jack and the Chinese were planning to attack him.¹⁵ Clarke responded immediately by sending W.A. Pickering to Sungai Ujong with instructions to advise the Dato' Klana and prevent the Chinese from taking sides in the dispute.¹⁶ He also sent a letter to the Shahbandar, who he described as being 'under the orders of the Dato' Klana,' warning him that he would protect the ruler and

13. Swettenham Journals, 8 Nov. 1874. These journals were kept by Swettenham between 19 August 1874 and 31 August 1875. They cover the period of his stay in Selangor and his visits to Perak and Sungai Ujong.

14. This arrangement appears to have been unknown to the Straits officials until Pickering's meeting with the Shahbandar in October. (Pickering Journal, pp. 2-3.) Swettenham reported this information also after his meeting with him and reported that the Sultan of Selangor confirmed the truth of the convention. (Swettenham Journals, 10 Oct. 1874.)

15. Dato Klana to Lt. Gov. of Malacca, 24 Sept. 1874, enclosed in Clarke to Sec. State, 29 Dec. 1874, C. 1320, p. 40.

16. Pickering to Governor, 23 Dec. 1874, enclosed in Ibid, p. 44.

and take action against those who might disturb the peace.¹⁷

On his way to the Klana, Pickering interviewed the Dato' Shahbandar and apparently for the first time realised that there might be another side to the dispute.¹⁸ But bound by his instructions on 10 October he gave the Shahbandar two days to reply to the Governor's letter warning him that if he failed to acquiesce in the new arrangements he would have to suffer the consequences. At the same time the Dato' Klana was being pushed to exercise his authority over the obstinate chief. Captain E.W. Shaw, the Lieutenant-Governor of Malacca, wrote urging him to attack the Shahbandar; he explained that Pickering's task was to give 'countenance' to the Klana while he 'punished' the Shahbandar.¹⁹

This was also Pickering's view of his role so that when the Dato' failed to reply to the Governor's letter he demanded that the Klana should attack him.²⁰ Rasah was taken unopposed on the 14 October, but later the same day when it was rumoured that Raja Mahmud of Selangor had joined the Shahbandar, the Klana's supporters fled.²¹ Pickering had to admit that he was 'rather in

17. Governor to Dato Bandar, 3 Oct. 1874, enclosed in Ibid., p. 42.

18. Pickering Journal, 10 Oct. 1874, p. 4.

19. Ibid., 11 Oct. 1874, p. 5.

20. Ibid., 12 Oct. 1874, p. 6.

21. Ibid., 14 Oct. 1874, p. 7.

a fix now';²² certainly his position had altered. It had been thought that the Dato' Klana would be able to destroy the authority of the Shahbandar. It was now necessary for Pickering to protect the Klana, but also, if he was to uphold the ruler's authority, to act on the Dato' Klana's behalf. But before proceeding further Pickering visited the Dato' Shahbandar to assess for himself the extent of his force and defences. What he found only confirmed his earlier suspicions. There was no armed force and no elaborate preparations for an attack at Kapayang. The old man protested that he had ^{no} intention of starting a war and presented to Pickering a Raja Mahmud, who was a relative of Raja Bot of Lukut. He also gave Pickering a letter expressing his willingness to abide by the Governor's decisions. Pickering found this very convincing evidence of the Shahbandar's earlier promise to remain at peace with the Dato' Klana. He certainly had treated the Klana openly and had apparently behaved with his rights as joint ruler. In Pickering's opinion, the whole question, at least for the time being, was settled and he returned to Singapore.²³ Before his departure, he concluded an agreement with the Chinese and Klana

22. Ibid., 15 Oct. 1874, p. 9.

23. Ibid., 14 Oct. 1874, p. 8; Pickering to Clarke, 23 Dec. 1874, enclosed in Clarke to Sec. State, 29 Dec. 1874, C. 1320, p. 44. Swettenham read the Shahbandar's correspondence to the Dato' Klana and was unable to find fault with it. (Swettenham Journals, 10 Oct. 1874.)



whereby the latter was recognised as the ruler of Sungai Ujong and the Chinese Capitans promised not to conspire against him.²⁴

Ten days later, however, Pickering was on his way back to Sungai Ujong. The Dato' Klana, supported by Captain Shaw, continued to press for protection and assistance.²⁵ Pickering, on Clarke's instructions demanded that the Dato's Shahbandar sign the April treaty and retire to Singapore or be deposed.²⁶ It was felt that his authority had to be broken once and for all time if British influence was to be effective in Sungai Ujong. His mere presence was thought to be enough to undermine the authority of the Dato' Klana.²⁷ The Shahbandar stubbornly refused to agree to this ultimatum and after another visit to Singapore Pickering returned with a small force of police to enforce the Governor's wish. On 15 November, before the members of the waris-di-darat and waris-di-ayer, the Dato Klana appointed Ahmad bin Hadji Mohmed

24. Pickering Journal, 15 Oct. 1874, p. 9. In an earlier agreement with Ismonger, the Chinese Capitans had agreed to fines and had not bound themselves personally for the behaviour of their men. (Clarke to Sec. State, 29 Dec. C. 1320, p. 7; Pickering's Journal, 9 Oct. 1874, p. 4.)

25. Clarke to Sec. State, 29 Dec. 1874, C. 1320, p. 9.

26. Pickering to Governor, 29 Dec. 1874, C. 1320, p. 45, and Pickering Journal, 14 Nov. 1874, p. 15.

27. Pickering Journal, 5 Nov. 1874, pp. 11-2.

Ali as Dato' Shahbandar, formally confirming the election in a written document to which Pickering was a witness.²⁸ On the next day the Klana launched his attack on the deposed Dato' Shahbandar. In the ensuing battle the initial successes of the Klana's forces were quickly reversed when the famous Raja Mahmud appeared at the Shahbandar's side. As the Dato's forces fled Pickering was left to carry on with a handful of Arabs.²⁹ At the same^{time} Pickering learnt that the Chinese had surrepticiously given assistance to the Shahbandar.

The position of the Chinese in this contest was of considerable importance. Why should they have sided with the deposed Shahbandar? Loyalty to an old friend was hardly an important factor when such large stakes were involved. They may well have thought that the old Dato' was powerful enough to win with the support of Raja Mahmud, but the decisive factor was probably secret society rivalry. The three Capitan Chinese, Wong Ying, Ngo Khim and Khoo Sam, were members of the Hal San secret society.³⁰ Doubtless,

28. Dunlop to Clarke, 29 Dec. 1874, enclosed in Clarke to Sec. State, 29 Dec. 1874, C. 1320, p. 49; Bland, JSBRAS, Aug. 1895, No. 28, pp. 63-4 gives an account of this meeting. Pickering Journal, 15 Nov. 1874, p. 15. For a copy of the surat kuasa, see Gullick, JMBRAS, Vol. XXII, Pt. II, p. 68.

29. Pickering Journal, 17 Nov. 1874, pp. 17-8.

30. M.L. Wynne, Triad and Tabut, (Singapore, 1941), p. 412 and L.F. Camber, Chinese Secret Societies in Malaya, (Singapore, 1959), p. 232.

they saw the possibility of Dato' Klana Putra gaining ascendancy over the Shahbandar as a serious threat to Hai San interests in Sungai Ujong for the Klana appears to have^{been} backed by the Ghee Hin. The evidence is very slender in such matter^s, but Tan Kim Cheng, who was generally acknowledge to be the head of the Ghee Hin, can be linked to the Dato' Klana. For instance on his behalf in 1872 Tan Kim Cheng bought two field guns and during an interview with the Governor in July 1873 Tan acted as his interpreter.³¹ This connection might account for the Capitans strong protest to Pickering when the Klana proposed to rent the opium farm in Sungai Ujong to a 'Malacca man' (who may well have been Tan Tek Guan, a younger brother of Tan Kim Cheng.)³² Indeed Pickering's success in persuading the Dato' in dropping this proposal may have helped him to secure the pledge from the Capitans not to take sides in the struggle for power.³³

As the civil war swung towards the Shahbandar, the Chinese actively assisted the old Dato' and refused Pickering's suggestion

31. Braddell memo., enclosed in Clarke to Sec. State, 29 Dec. 1874, C. 1320, pp. 28 and 32.

32. Wynne, op. cit., p. 387.

33. Pickering Journal, 8 Oct. 1874, p. 3.

to guarantee the safety of the Dato' Klana and his family.³⁴

However, in late November Pickering was relieved by Captain S. Dunlop with a force of nearly two hundred men and the Shahbandar and Raja Mahmud were driven out of Sungai Ujong. Dunlop and Pickering then decided to break the opposition of the Chinese to the Dato' Klana. This they regarded as essential if peace and order were to be maintained and, as he explained to the Dato' Klana, the prosperity of Sungai Ujong rested with the Chinese and not with '300 or 400 cowardly Malay followers.' Dunlop had the three Capitans brought before him and with the 'consent and approval' of the Dato' Klana he fined each \$3,000. Only Ngo Khim refused to pay, but after receiving twenty strokes of the rattan he too paid.³⁵

Having established the authority of the Dato' Klana, Dunlop and Pickering departed for Singapore leaving Captain Tatham in charge as 'Acting Commissioner.' Before their departure they laid the foundations for the future administration of Sungai Ujong. The Capitan Chinas were persuaded to enter into an agreement pledging themselves not to quarrel and to return to mining

34. Ibid., 19 Nov. 1874, pp. 18-9; Dunlop to Clarke 29 Dec. 1874, C. 1320, p. 48.

35. Dunlop to Clarke, 29 Dec. 1874, C. 1320, p. 48.

immediately. They were given jointly the opium, spirit and pawnbroking forms for a monthly rent of \$1,500 and each separately a gambling farm for \$200 per mensem. The duty on tin was fixed at one-fifteenth and the control of water supplies to the mines became the responsibility of the ruler. The poll-tax on Chinese was abolished, a registration fee became necessary for all trading boats and harbour fees were required of all craft calling at Rasah. Henceforth, Rasah was to be the only port for Sungai Ujong and the location of the police station and the residence of the British officer.³⁶

iii

Conditions in Selangor were somewhat different. In 1874 the civil war had depopulated many districts. In the interior Chinese remained in large numbers only in the mining area around Kuala Lumpur.³⁷ There they came under the control of the Capitan China,

36. Dunlop to Clarke, 29 Dec. 1874, C. 1320, p. 52; Tatham to Col. Sec., 18 Dec. 1874, Ibid.

37. The Chinese quarter of Kuala Lumpur was reported by Swettenham in 1875 to have been inhabited by about 1,000 Chinese and the Malay quarter by about 5-700 persons under their own headman. (Swettenham Journals, 26 Mar. 1875.) He does not give any estimate for Chinese living in the vicinity of Kuala Lumpur, but it must have been at least double this number and after 1875 it increased rapidly.

Yap Ah Loy, who, although his title was held under the Sultan's seal, in fact derived his power from being headman of the Hai San secret society.³⁸ Tengku Zia'u'd-din the Viceroy (Wakil Mutlak) could only exercise effective control over the districts of Klang and Kuala Selangor.³⁹ But from these positions he controlled the two principal rivers, deriving a relatively large income from the river traffic to and from the mines. He had the valuable support of the Governor who believed he was the only chief anxious to restore regular government and trade in Selangor - a reputation he had gained in part through his success in the war and his association with the Singapore barrister J.G. Davidson who was one of his principal creditors and adviser.

38. Yap Ah Loy became head of the Hai San in the same year that he was appointed Capitan China. Although installed first by Raja Mahdi and then by Tengku Zia'u'd-din in 1873, he held his authority under the ruler's seal and exercised the power of a district chief, his jurisdiction extended only to the Chinese as his personal seal indicated: 'Yap Ah Loy (acknowledged by the) Sultan Gallant, Victorious, Loyal Chief (of the) Chinese (of) Kuala Lumpur (and) Klang.' In addition to a seal of office, he received a tombak tebrang (a ceremonial drum) and was entitled to a body-guard or honour guard of two men - panglima kanan and panglima kiri. (Middlebrooke, JMBRAS, Vol.XXIV, Pt. 2., pp. 6, 31-2, 39, 41, 83.)

39. The Tengku, the Sultan's son-in-law was appointed to this position in 1868, confirmed by the Sultan in 1870 and again in 1871 and accordingly recognised by the Colonial government. (Winstedt, JMBRAS, Vol.XII, Pt. III, p. 21.)

The Sultan, 'Abdu'l-Samad, had as far as was possible withdrawn from political life and therefore exercised little authority beyond his own district of Langat. Even within Langat the Dato' Dagang who had usurped the position of the Dato' Shahbandar of Selangor and had become the Sultan's adviser and revenue collector was the most influential chief.⁴⁰ From time to time 'Abdu'l-Samad's three sons lived at Langat or at the Sultan's residence at Bukit Jugra a short distance up the Langat River. When Swettenham arrived in August 1874, Raja Musa had left the country and only Rajas Ya'akob and Kahar remained, though the latter departed for Ulu Langat shortly afterwards. The activities of these men and others, particularly Rajas Mahdi and Mahmud, had earned Langat a reputation of being a retreat for pirates and fugitives. It was to Langat, therefore, that Clarke sent Swettenham in August 1874. The Sultan apparently welcomed the arrangement, but Swettenham warned him that he would remain only so long as he would honour his pledge of 1871 not to permit piracy in Langat or to support Rajas Mahdi and Mahmud who had recently been driven from Selangor

40. Ibid., 23 and 26 Aug. 1874. F.A. Swettenham, 'Some accounts of the independent Native States of the Malay Peninsula,' JSBRAS, Vol. 6, (1880), pp. 186-92.

by Tengku Zia'u'd-din.⁴¹

Swettenham was sent to Langat not to give orders but to 'advise', but it was some weeks before Swettenham's position in Selangor was made clear at all. Within a few days of his arrival, Swettenham reported that the Sultan had offered to provide him with food and other provisions and pay the salary of himself and his police guard. Then the Sultan offered a sum of \$1,000 a month to cover Swettenham's expenses and salary.⁴² The latter reported this offer to the Governor when he visited Singapore in September and upon his return brought the Governor's reply. When he delivered this letter to the Sultan Swettenham showed him a copy of a proclamation which he had drafted on the future administration of the country.⁴³ ~~Late 1 October~~, 'Abdu'l-Samad, despite the opposition of his two sons, on 1 October signed both the letter and the proclamation.⁴⁴ The latter document announced the appointment of a British officer to Selangor and the restoration of trade, but the letter, as has been discussed above, granted, in

41. Swettenham Journals, 28 Apr. 1874. The Sultan gave his pledge in a letter to Birch, dated 22 July 1871, enclosed in Anson to Sec. State, 28 July 1871, C. 465, p. 23.

42. Swettenham Journals, 24 and 31 August, 1874.

43. Ibid., 29 Aug. 1874.

44. Ibid., 2 Oct. 1874. At the Sultan's request, Swettenham drafted the reply to the Governor. (Ibid., 30 Sept. 1874.)

addition to the monthly sum of \$1,000 and a house, Swettenham the right to collect the State's revenue: 'I hand over to my friend all arrangements for opening my country and collecting its revenue. In Swettenham's opinion the Sultan had by this letter 'handed over the whole administration of his country' to him. Again when the Governor replied to the ruler's offer, Swettenham noted that 'Abdu'l-Samad understood that by his letter he had 'offered the entire control of the revenue and affairs of his country to the Governor.'⁴⁵

At first sight it would appear that the ruler had given Swettenham very extensive powers in Selangor. Yet, as might be expected in such a document, it gave no indication of how his powers were to be exercised. How, for instance, would the revenue be collected and who would carry out the executive orders? These questions were in their solution decisive in determining the kind of administration Selangor was to experience under Resident rule.

After the letter and proclamation in October were signed, Swettenham began to take a more active part in the administration of Langat and Klang. With the Sultan's authority he took steps to improve the condition of Langat village and with a view to determining the revenue of the district he asked the Dato' Dagang to prepare a fortnightly returns of the imports and exports.⁴⁶

45. Ibid., 15 Oct. and 19 Nov. 1874.

46. Ibid., 25 Oct. 1874.

He turned his attention to Klang where, at the request of Tengku Zia'u'd-din, the Union Jack was raised to reassure Chinese traders of his presence and intention to preserve order in Selangor. It was here that Swettenham hoped eventually to establish the Sultan and himself as it possessed the best route to the minging area at Kuala Lumpur.⁴⁷

Swettenham found that the accounts of the district had been muddled by a European Davidson had left in charge. These he completely reorganised, setting out a new treasury and accounting procedure and laying down a customs regulation for Klang - rules which he noted were 'in reality a law.'⁴⁸ At the suggestion of the Viceroy, Swettenham made one of Tengku Zia'u'd-din's principal creditors, Tek Ah, treasurer.⁴⁹ Tek Ah was required to give security and with the assistance of two clerks decided the amounts payable on all dutiable goods passing through Klang. He received

47. Ibid., 20 Nov. 1874.

48. Ibid., 21 Nov. 1874; Swettenham to Sec. for Native States, in 18 Dec. 1874, enclosed in Clarke to Sec. State, 23 Mar. 1875, CO 809/5 and C. 1111, p. 269.

49. Tek Ah may have been Tan Tek Guan. Tek Ah apparently resided normally at Malacca (Winstedt, JMBRAS, Vol.XII, Pt. 111 p. 32.) and Wynne thought he was probably Tan Tek Guan (Wynne, op. cit., p 420). If so he was the younger brother of Tan Kim Cheng and according to Wynne probably head of the Ghee Hin in Malacca. (Ibid., p. 387.) Swettenham estimated that between 1868-74 this man lent Tengku Zia'u'd-din in goods and money \$203,000, but by 1874 the sum owing, excluding the half-yearly compound interest of 18%, amounted to \$105,000. (Swettenham Journals, 25 Nov. 1874.)

all returns and paid bills on his own authority when not in excess of £10 or for sums over this amount with the approval of the Viceroy. Duties - usually a tenth on most imports and exports - when paid in kind were sold by auction from time to time.

Swettenham investigated the land tenure system and the arrangements for reclaiming vacated land. A gutta percha monopoly exercised by Guthrie & Company was broken and the claims of Tek Ah upon the Viceroy was calculated. Swettenham also settled a dispute between the Viceroy and Raja Ismail whose father had once controlled Klang district, and persuaded Raja Ismail to sit with Syed Zin, Tengku Zia'u'd-din's agent, as a magistrate to hear in all cases in Klang except those involving murder, robbery with violence (including piracy) and cases involving questions of religion.⁵⁰

Swettenham returned briefly to Langat, but shortly afterwards accompanied Sir Andrew Clarke on his visit to the east coast Malay States. He returned in February about the time that J.G. Davidson arrived as the first British Resident.⁵¹ During March and early

50. Ibid., 19, 21 and 25 Nov. 1874.

51. Davidson was nephew of James Guthrie; became a barrister in 1861 and until 1872 a partner of Woods and Davidson. On 14 Jan. 1875 he was appointed British Resident to Selangor, to the same post in Perak in 1876 until his retirement in 1877 when he returned to his legal practice with Rodyk. He died in 1891. (SLJ, Vol.IV, No. 33, Feb. 1891, pp. 13-4; SSGG, No. 11, 16 Jan. 1875, p. 84; Jervois to Sec. State, 8 Feb. 1877, Tel., CO 537/45.)

April he made a journey through the interior of Selangor by way of Ulu Langat, Kuala Lumpur and Kuala Selangor. But during his stays in Langat he continued to introduce changes in the district, rebuilding roads, arranging for the lease of opium farms. On several occasions he heard cases sitting with two or three chiefs such as the Dato' Shahbandar and Dato' Dagang. He refrained, however, from actually supervising the collection of revenue, limiting himself to giving advice usually to the Sultan and always on his own initiative. When particularly important matters arose such as the leasing of the opium farms, he would refer the question to the Governor for his instructions. The farm would be left, however, in the Sultan's name. It is clear, therefore, that Swettenham intended to implement his reforms through existing institutions - he hoped each mine or village could be placed 'under a Penghulu, each district under a Raja to be answerable to the Sultan, his Viceroy and the Residents.⁵² Explaining this proposal to the Governor, he recommended that the offices should be held not on the hereditary principal but on merit and that each officer should receive a regular salary. The datos would retain their powers and the penghulus would hear petty cases and collect

52. Swettenham Journals, 31 March 1875.

local taxes.⁵³

Although Swettenham made these recommendation in April 1875 there had been evidence for sometime that it might be difficult to give effect to such a system. An early case at Langat illustrates the point. In September, 1874 the Dato'Dagang wrote to Swettenham that a boat had passed Langat refusing to take out a pass with him as Harbour Master in accordance with the published regulations. In fact the offending boatman had secured a pass through the Sultan's secretary because he refused to acknowledge the authority of the Dato'Dagang. Swettenham went after the boat and brought the two offenders before the Sultan and Dato'Dagang. He explained the case to the Sultan and asked him to 'punish' the two men. The Sultan asked what he recommended, whereupon Swettenham proposed that each should be fined. This was agreed to and the Sultan ordered that the fines be paid to him through Swettenham. Although this incident took place shortly before the October agreement, it was a revealing instance of the difficulties Swettenham was to meet in attempting to introduce more regular government to Selangor. In this case he sought to uphold the Sultan's regulation, one which the ruler himself contravined.

Swettenham supported the Dato'Dagang's authority as Harbour Master

53. Swettenham to Sec. for Native States, 8 Apr. 1875, enclosed in Clarke to Sec. State, 27 Apr. 1875, CO 809/5.

and in doing so, played into the hands of a chief who used his office to squeeze traders for his personal gain.⁵⁴ Indeed, in February Swettenham found it necessary to ask the Sultan to warn the Dato'Dagang 'to do only what he was told, which he does well, and not seek to make money for the Sultan by his own genius, which he does badly.'⁵⁵ The Dato', of course, continued to 'squeeze',⁵⁶ But it was particularly difficult to remove him except for his squeezing he was a very efficient collector and on at least one occasion Swettenham complained that during the Dato'Dagang's absence the taxes were collected 'indifferently'.⁵⁷

There were also increasing complaints about Raja Kahar. Soon after Swettenham had arrived in Langat, 'Abdul-Samad permitted him to take charge of the Ulu Langat district. In early 1875 complaints were frequently made by people in the village of Ulu Langat about the raja's behaviour and when Swettenham visited the district later the same month he went armed with a letter from the Sultan instructing his son to obey Swettenham. Contrary to his expectations

54. Ibid., 28 Sept. 1874.

55. Ibid., 25 Feb. 1875.

56. Ibid., 9 Apr. 1875.

57. Ibid., 16 June 1875.

he was very impressed by Kahar's efforts to restore the town of Kajang and revive its trade and encourage reopening of mines in the area. The source of the complaints was a Menangkabau Imam, Prang Mat Asis, who collected duties in Ulu Langat and resented Raja Kahar's presence. Swettenham claimed that from this episode the word spread that there was wide-spread discontent and migration from Ulu Langat⁵⁸; but in his opinion there was no evidence either at Kajang or Ulu Langat village that Raja Kahar had abused his powers. Instead, at both places Swettenham supported the authority of the Raja and confirmed his right to collect taxes. He permitted the Imam to collect duties at Ulu Langat on the condition that they were sent to Tungku Zia'u'd-din.⁵⁹ By August, however, Swettenham was informed that Raja Kahar was acting arbitrarily; he had on one occasion taken a daughter from one man who owed him money and on another he had confiscated a quantity of tin. The latter story especially, it was said, had frightened off investors and traders to the district.⁶⁰

58. Ibid., 8 and 22 Mar. 1875.

59. Ibid., 25 March 1875. Swettenham hoped eventually to have penghulu's established at Reko, Kajang, Cheras and Ulu Langat, each collecting a two dollar duty on every bhara of tin, half going to the Sultan and the remainder to the penghulu.

60. Ibid., 13 Aug. 1875.

About this time, Swettenham recorded a number of interviews he had with several important Malays among them, one of Raja Kahar's chief advisers, the Sultan's secretary and the son-in-law of the Dato'Shahbandar of Sungai Ujong, who complained of raja rule in Selangor. They reported many stories of how the chiefs ignored Malay adat and ruled arbitrarily. They supported their assertions with stories of Raja Mahmud, Mahdi, and the Sultan's sons. Selangor, Swettenham related, could never progress under the rajas, the only hope of the people lay in the English Government.⁶¹ He said they looked for some 'fixed laws and not the caprice of every anak Raja' and reported one as saying that 'the poor people here all believe I can do exactly as I like and that if the Sultan said one thing and I another they would obey me.'⁶²

This last passage points to Swettenham's dilemma. Although the Sultan was prepared to accept his advice, Swettenham found it difficult to have this advice carried out by the rajas. His presence in Langat had prevented the return of Rajas Mahmud and the latter's father, Tungku Panglima Raja; but Rajas Kahar and Ya'akob, in his opinion, continued to abuse their powers, oppressing the people and squeezing traders. The Sultan was

61. Ibid., 11 Aug. 1875.

62. Ibid., 13 Aug. 1875.

unable to exercise any effective authority over them. When Swettenham explained how his sons were behaving, 'Abdul'l-Samad asked him to try and correct their bad habits. He found the position intolerable. As he remarked, the Sultan had told 'everyone that he handed over the management of his country' to him but at the same time 'his sons do as they like almost always when they think I shan't hear of it.⁶³

Swettenham's growing impatience with his position coincided with a proposed change in policy which Jervois was considering at this time. Prompted by the difficulties the Resident of Perak was experiencing, the new Governor decided that the Residents in Selangor and Perak must be allowed to assume direct control of the administration of these States. In late June he met the three Residents - Birch, Davidson, and Swettenham - and others at Penang where, it appears, he set out his proposals for the first time.⁶⁴ Indeed, Jervois during a visit to Langat in May was told by the Sultan, no doubt in reply to his question that he 'would be glad' if Swettenham collected the revenue for him.⁶⁵

63. Ibid.

64. Ibid., 22 June 1875.

65. Ibid., 27 May 1875. And in early August Birch during a visit to Langat had explained that they would have to take 'some more active means with the Perak Rajas' to make them live up to the conditions of the Pangkor Engagement. (Ibid., 9 Aug. 1875.)

But while Swettenham did not remain long enough in Selangor to implement the new policy, his continued complaints about the rajas' behaviour, anticipated the change. On one occasion he wrote: 'One must hear and do nothing except mildly remonstrate, sit down and accept them as "adat Malayu"' which he described as a 'fig leaf of pretence to cover the exactions, oppressions and cruelties which they heap on a long suffering people.' It seemed to him to be 'a travesty in the "English Protection" under which the Native States flourish.'⁶⁶

Swettenham left Selangor at the end of August while Davidson remained a few months longer until he was called to fill the post of Resident in Perak left vacant by the murder of James Birch. The reforms which had been planned were left in abeyance until Perak had been pacified and a decision had been taken as to the powers the Residents were to exercise in the Malay States.

iv.

With the signing of the Pangkor Engagement, Captain Speedy was appointed to take up his post as Assistant Resident to Perak. For this enigmatic character, the change of roles from the Mantri's agent to British official was easily made. After the settlement of

66. Ibid., 22 Aug. 1875.

the disputes between the Chee Hins and Hai Sans, on the basis of the arbitration handed down by the Commission set up at Pangkor, Chinese capital and miners quickly returned to Larut.⁶⁷ At the height of the disputes, the population had been reduced to a mere four thousand Chinese, but by the end of 1874 Speedy could report that they numbered 26,000 out of some 33,000 persons.⁶⁸ This is a significant figure, for it suggests, in part, why the Mantri was unable to control the Chinese, and why Speedy found it necessary to assume direct control of the administration, becoming the executive head of the region and issuing orders in the name of the Sultan of Perak. It had become possible for him to take charge because there was not a settled Malay community in the district of sufficient size either to enable the Mantri to implement Speedy's advice.⁶⁹ Instead, the Mantri was placed on the civil list⁷⁰ and

67. A report of the activities of this Commission appears in the form of a journal kept by Swettenham for the period 23 January to 21 February, 1874 and is to be found in his unpublished journals. A copy was published in SSLC Paper, No. 26, 15 Sept. 1874, and extracts are published in Comber, op. cit., Chapter 13. See also Speedy's Report on Larut, 1874 enclosed in Clarke to Sec. State, 6 Apr. 1875, CO 809/5 and C. 1320, p. 68.

68. Speedy's Report on Larut, 1874, in Governor to Sec. State, 6 Apr. 1875, CO 809/5, C. 1320, pp. 76. For a comparison, see Gullick, Indigenous Political Systems, pp. 23-24.

69. Speedy's Report attracted the attention of Lord Stanley of Alderley, who complained of his assumption of direct control. (Lord Stanley to Sec. State, 29 June 1875, CO 273/82; C. 1320, pp. 117, 119.

70. Gullick, JMBRAS, Vol. XXVI, Pt. 3, pp. 57-58.

took no part in government, while Speedy, with a small staff of Europeans as heads of key departments, introduced the necessary machinery to maintain order and allow the district's mining industry to revive.⁷¹ Speedy re-organized his Indian guard, opened roads, and issued harbour and customs regulations.⁷² A court of justice was established with a British magistrate to decide criminal cases on the basis of the Indian Penal Code. In collection of revenue he did away with tax-farming of the tin duties and collected them directly by government officers.⁷³

These developments in Larut contrasted markedly with what took place in Perak Besar under Birch, the first British Resident.⁷⁴

71. Speedy's European staff included a Treasurer, who also acted as Magistrate, Inspector of Mines, Inspector of Roads, Harbour Master, and Medical and Forestry Officer. (Ibid., p. 56. See also report in Governor to Sec. State, 6 Apr. 1875, C.O. 809/5.) After a tour of the Malay States in February, 1875, Skinner commented on Larut in glowing terms. He wrote: 'What with the numerous European officers and the new government building and police stations, Larut strikes one as being by far the most civilized place in the Malay States.' (Skinner's Report enclosed in Governor to Sec. State, 22 Mar. 1875, C.O. 809/5; C. 1320, p. 109.)

72. Speedy's Report on Larut, in Governor to Sec. State, 6 Apr. 1875, C. 1320, p. 19.

73. Skinner's Report Ibid., p. 76; Speedy's Report on Larut, Ibid., p. 19; Gullick, JMBRAS, Vol. XXVI, Pt. 3, pp. 45-6.

74. James Wheeler Woodford Birch, joined the Ceylon service in 1846 during the next fourteen years he served in most districts variously as a government agent and district judge and before his departure, government agent of the eastern province. In 1870 he became the Colonial Secretary to the Straits Settlements and acting British Resident, Perak, in November, 1874. (Colonial Office List, 1875.)

Birch did not arrive to take up his duties in Perak until nine months after the signing of the Pangkor Engagement. It was an unfortunate delay for it enabled the dissident ulu chiefs to consolidate their forces and resist with greater force the arrangements made in January.⁷⁵ 'Abdu'llah, too, no longer intimidated by his Pangkor experience, let the revenue farm at Kota Blanda in the Shahbandar's name to his principal creditor Lee Cheng Tee for \$26,000, receiving \$13,000 in advance. But the new Sultan was something less than secure.⁷⁶ His authority was limited to the hilir, the Mantri, Ismail and Raja Yusuf (whose claim to the sultanate was unknown to Clarke in January) had not signed the treaty and refused to acknowledge 'Abdu'llah or give up the regalia.⁷⁷ Birch arrived in Perak, therefore, to advise a ruler whose authority did not extend throughout the country and who

75. At a meeting of Ex-Sultan Ismail, the Mantri, Raja Yusuf and other important chiefs on 16 October 1874, it was decided not to give the Regalia up to 'Abdu'llah and if necessary to fight to retain its possession. The Mantri's lawyer was to lead a delegation to England to present their case in London. The cost of these arrangements was to be paid by the Mantri. (Précis; Birch's Report on Perak, 2 Apr., 1875, in Governor to Sec. State, 26 Apr., 1875, C.O. 809/5; C. 1320, pp. 85-93.)

76. This man was a brother-in-law of Tan Kim Cheng the head of the Ghee Hin. (Wynne, op. cit., p. 275.)

77. Cowan, Nineteenth Century Malaya, p. 155; Cowan, JMBRAS, Vol. XXIV, Pt. 4, 1951.

was surrounded by hostile chiefs.

Upon taking up his appointment, Birch was issued with instructions of which the most important part dealt with revenue. In the absence of information about the system of taxation in Perak, he was instructed to permit the existing system to continue except where it was of 'such an irregular character as to require immediate alteration.' He was to make every effort 'to put down by force if necessary, all unlawful exactions of whatever nature,' in order that all revenue should be 'collected for the State alone' and 'paid into the general treasury'.⁷⁸ These were curious instructions for they threw the responsibility onto the Resident to decide how the revenue system worked, to determine what were legal taxes and, regardless of the system, to have all revenue paid into the State treasury. But while it was ~~conceivable~~ ^{possible} to determine what constituted an unlawful exaction - not an easy task as it turned out - the notion of a central treasury was completely alien to Perak. And indeed, the creation of a central treasury, contrary to his instructions, would necessitate a radical alteration of the structure of the 'existing system.' In the months which followed Birch was to give the point a good deal of thought. Indeed, soon after arriving in Perak, at a meeting at Batak Rabbit with the Sultan,

78. Précis, p. 9.

Mantri, Laxamana, Shahbandar and Raja Makota, he explained his plans for the better government of the country.⁷⁹ In essence, he envisaged the establishment of a central administration. The country would be governed by 'Penghulus' and 'Dato's', justice administered by a head hakim or judge and order maintained by a police force. Six weeks later he submitted his findings and made various recommendations which in general followed those set out at Batak Rabit.⁸⁰ Broadly speaking he felt that the 'old customs' by which Perak was governed were no longer relevant to the country's needs. The presence of a large Chinese community determined that taxation should be 'handled with reference to them, and not with regard to old customs.' He went on to report in some detail what taxes were levied and how they were collected and concluded that 'no system of any sort existed'. He then made his recommendations for reform. There ought to be one joint opium, spirit and gambling farm. Taxes should be placed on padi, arms and all kinds of boats, and he outlined proposals for gaining revenue from timber and atap and the sale of land. Receipts from all these sources of revenue

79. Précis, pp. 5-6.

80. This information is derived from the Précis and Birch's report, 2 April, 1875 enclosed in Clarke to Sec. State, Apr. 1875, CO 809/5.

were to be turned over to a State treasury.⁸¹

In order to implement these reforms, chiefs who had the power to collect taxes would have to be placed on a civil list if they were 'deserving' while all revenue would be collected by government officers. In this connection, he intended to regularise the appointments of penghulus by issuing new surat kuasa, thereby making them paid tax collectors responsible to the central government. Finally, he proposed the creation of a police force and the proclamation of a code of civil and criminal regulations determining the powers and jurisdiction of datos in their judicial functions over whom he intended to establish a superior judge or hakim.⁸²

Clearly, Birch sought to overthrow the 'old customs' and institutions in order to make way for the establishment of a central administration with fiscal centralisation and a treasury providing for salaried administrators. These were far reaching reforms which received Clarke's formal approval in early February, 1875. There is unfortunately no record of Clarke's comments on these proposals, for he might have given some description of the executive head of of this new administration. Presumably it was to be the Resident

81. Ibid.

82. Précis, p. 6 and Birch's report, 2 April, 1875, in Governor to Sec. State, 26 Apr. 1875, CO 809/5.

and, indeed, Birch's attempts during the following months to induce 'Abdu'llah to sign several proclamations to give affect to some of the reforms, suggest this conclusion. As the author of the Précis explained, it was necessary for Birch to advise 'the Sultan for such written authority under his seal as would have justified him, without straining his legitimate powers, in introducing a new system.'⁸³

It is not difficult to believe that these proposals raised considerable consternation in 'Abdu'llah's camp. He and his supporters could hardly have appreciated the value of such reforms, but must have seen them as destroying their livelihood. The Mantri's prophetic remark must have been convincing; 'I think Mr. Birch will by and by keep many more Europeans to take charge of the country and have stations and sepoy and Police. After a few years they will surely drive us out of the country.' Indeed, when Birch arranged a meeting between Ismail and 'Abdu'llah in the hope that the regalia might be surrendered to the Sultan, 'Abdu'llah warned Ismail not to give it up, 'since on that day of truth, the country of Perak will be given over to the English.'⁸⁴

In February and March 1875 Birch tried unsuccessfully to obtain 'Abdu'llah's signature to proclamations which would enable him to

83. Précis, p. 10.

84. Ibid., p. 7.

introduce his reforms of the tax system.⁸⁵ The Sultan always managed to avoid putting his signature to any document and continued to lease in various districts on his own behalf. Clarke found it necessary in April to write a strongly worded letter to 'Abdu'llah demanding his compliance with the treaty arrangements and not to collect taxes. And in a proclamation dated 9 April he announced that no taxes were 'to be levied by or paid to any person' in Perak without the 'authority of Her Majesty's Resident in Perak acting on behalf of and in the name of the Sultan of Perak.'⁸⁶ A few days later Birch placed before the Sultan six notices to come into force on the 1 June. All dealt with the revenue system and one notice in particular prohibited the collection of taxes by chiefs and headmen. In June, the notices still unsigned, Birch warned 'Abdu'llah that unless they were sealed by the 20 July he would run the risk of losing the sultanate.⁸⁷

'Abdu'llah, for his part, made every effort to frustrate Birch's plans. On the slightest pretext he avoided signing the proclamations.

85. Ibid., pp. 8-9.

86. Précis, p. 11.

87. Ibid., p. 14; M.A. Mallal, 'J.W.W. Birch, Causes of Assassination,' unpublished Ph.D. thesis, 1952, University of Malaya, pp. 121-3.

In March he issued a surat kuasa delegating his authority to five chiefs to represent him, but Birch refused to deal with them.⁸⁸

Then, in May he sent a deputation to place his grievances before Clarke, requesting that there should be no interference in Malay religion and custom and no action taken 'without consulting' him and his chiefs. He demanded the return of runaway slaves to whom Birch had given refuge, and particularly asked that no taxes should be abolished which 'chiefs had been accustomed to receive for their own benefit.'⁸⁹ Exasperated by his failure to gain satisfaction from the Governor, he called a meeting of all the important Perak chiefs, or representatives, at Durian Sa-batang on 20 July. All, except Raja Yusuf, attended and they decided that Birch had to be removed from Perak, a decision which would be best accomplished by his death.

A few days later Birch asked 'Abdu'llah to sign three notifications, one to appoint himself and Raja Idris judges, and the other to empower the Resident and Shahbandar to control the imposition and collection of all taxes and the appointment and

88. Ibid.

89. Précis, p. 11; Wilkinson and Winstedt, JMBRAS, Vol. XII, Pt. 3, pp. 108-11; Cowan, Nineteenth Century Malaya, pp. 222-23. Clarke refused to reply officially to 'Abdu'llah's complaints on the ground that he was no longer Governor. Instead, he wrote unofficially, urging him to obey the advice of the Resident.

dismissal of penghulus. On this occasion he agreed, but could not sign as his seal was broken.⁹⁰ Birch then left to visit Singapore where, it appears, he and Jervois decided that some other course of action was necessary if the Resident was to secure effective control of the administration of Perak. Jervois only a few days after his arrival in Singapore had written to the Secretary of State of the Sultan's failure to comply with his treaty commitments, remarking that the Malay States 'are not in a perfectly quiescent state.'⁹¹ In early July he warned that a change of policy might be necessary and in the following month he was, as he wrote later, 'convinced' that ''Abdu'llah ruling independently, with a British officer as an "adviser" only, was quite impracticable'. If 'Abdu'llah could be persuaded to agree, he proposed to adopt a policy of 'governing Perak by means of British officers in his name.'⁹²

In September Jervois visited Perak with the intention of implementing his decision. He held interviews with Ismail, Yusuf, and 'Abdu'llah in an effort to convince them of the merits of his

90. Précis, p. 14.

91. Swettenham Journals, 9 Aug. 1875.

92. Jervois to Sec. State, 16 Oct. 1875, CO 809/6.

proposals.⁹³ Ismail, probably under the influence of the Mantri refused to consider the idea, but Yusuf, who had visited the Governor in June and had agreed to the need for British control of Perak, proved more enthusiastic. In a letter dated 19 September he and Raja Idris urged Jervois to 'govern Perak'.⁹⁴ 'Abdu'llah avoided a decision and was given fifteen days in which to reply. On 1 October, under great pressure from Birch and Swettenham, he signed a letter drafted by Birch in which he agreed to give 'full powers to fix and collect all taxes' and the power to appoint and remove all officers in the districts and villages' and also 'to administer justice either personally or by deputy throughout Perak'. The essence of this letter was then embodied in two proclamations dated 2 October 1875.⁹⁵

Having gained the necessary consent of 'Abdu'llah, Jervois then issued a proclamation announcing the administrative changes. Henceforth, the State would be administered in the name of the Sultan by officers appointed by the Governor and styled 'Commissioner and Assistant Commissioners of Her Majesty the Queen with powers to

93. Ibid., and Précis, pp. 19-20.

94. Enclosed in Jervois to Sec. State, 16 Oct. 1875, CO 809/6.

95. Enclosed in Ibid.

issue and enforce Proclamations and orders and generally to administer the Government of Perak.⁹⁶ These officers were to receive their instructions from the Governor, but would work with the advice of a council of principal chiefs. On the following day, 16 October 1875, Jervois presented to the Secretary of State a fait accompli. Three weeks later, Birch was assassinated while attempting to enforce the new regulations.⁹⁷

Although the events in Perak tended to influence British policy in the Malay States, there were factors common to all three States which directed policy along a definite course. The expansion of the tin-mining industry had in some areas brought about a measure of internal disorder in the Malay States. Residents were introduced to sustain the good results of the Governor's intervention in such places as Larut and Langat. As well they were introduced to bring about better government of the kind which would facilitate the expanding economy. The prosperity of the Straits Settlements increasingly had become linked to the mining industry in the three west coast States and as the Pangkor Engagement reflected it was now necessary to organise the government of these States which would allow for the growth of this industry.

96. Ibid.

97. He died on 2 November.

In two of the three important mining districts, Larut and Sungai Ujong, direct rule by resident British officers was quickly achieved. In Larut, Malay rule had collapsed. The Mantri was unable to assert any control over the Chinese and was therefore unable to carry out any advice the Assistant Resident might offer. Thus, Speedy, with the assistance of a non-Malay staff, conducted the affairs of the district himself in the name of the Sultan. It was the only way his 'advice' could have been implemented. In Sungai Ujong, once the opposition had been overcome, it was also necessary for the Resident to assume direct control of the country's affairs. Like the Mantri, the Dato' Klana Putra's authority did not extend beyond his own followers. Pickering and more especially his successors found it necessary also to take direct charge of administering the State.

In Selangor, the Chinese had been responsible for bringing about a settlement of the country's civil war and had assisted in restoring the authority of the Viceroy. But here and in Perak British officers found that the Malay governing institutions were inadequate to permit the introduction of stable, uniform administration. The way in which the chiefs levied taxes was thought especially to deter this development. Indeed, Birch believed that no system of revenue collection existed in Perak and on one occasion spoke of the Sultan collecting 'illegal taxes.'

Nevertheless, both Residents in Perak and Selangor sought to bring about better administration initially through the existing institutions, but later - Birch more quickly than Swettenham - they adopted the view that the structure of government would have to be organised along different lines, conforming more nearly to their own notions of 'good' government - that of a centralised bureaucratic government - with dato's and penghulus its paid employees. But this proposal had to be abandoned also for on the one hand the chiefs were found to act in an arbitrary and oppressive manner, as in Langat, and on the other the ruler and chiefs, as in Perak, resisted the reforms. At this point there was a collision of priorities. The position was summed up by Jervois in a speech in October 1875 when he asked why the Malay Peninsula should not become as prosperous as Ceylon,

Why should not a large labouring population of immigrants imported into or voluntarily enter the states? Why should not English capital be invested as readily in these rich states as it is in the other parts of the world, to feed the labour so imported and to aid the general development? The answer can be given in two words: Malay rule. 98

95
Jervois policy was designed to remove this obstacle.

The Colonial Office found it difficult to accept his innovations as they were seen as tantamount to annexation. But although the title of 'British Resident' was restored in place of 'Commissioner',

98. SSLC Pro., 29 Oct. 1875.

these officers had acquired complete and effective control of the administration of the three States. Yet, in an ambiguous despatch dated 1 June 1876 the Secretary of State held that the system of Residents had not been given a fair trial and that the obstacles which had 'interfered with its success are apparently such as can be removed.'⁹⁹ Considering the role of the Residents in the future, he held that it was 'undesirable' that the British officers should interfere more frequently or to a greater extent than is necessary in the minor details of government.' Their function would be the maintenance of law and order and 'the initiation of a sound system of taxation with consequent development of the general resources of the country and the supervision of the collection of revenue' in order to 'ensure the receipt of funds necessary to carry out the Government, and to pay for the cost of the British Officers' and their establishment.¹⁰⁰

99. Sec. State to Jervois, 1 June, 1876, CO 809/7.

100. Ibid.

CHAPTER III

THE ESTABLISHMENT OF RESIDENT RULE.

i

By the time the disturbances in Perak had been put down the British Residents were able to exercise control over the administrative affairs of all three States.¹ The Secretary of State, however, found it difficult to admit that this situation should be recognized or continued. Domestic politics, rival interests in South East Asia and the Governor's aggressive defence of his own policy made it difficult for Lord Carnarvon to give formal recognition of the Residents real power.² As annexation could not be considered, and withdrawal, as Jervois had pointed out, would mean a return to conditions prior to Clarke's intervention, he decided to preserve the integrity of the Perak sultanate. Thus, in his instructions about the future policy, he ordered the Resident of Perak to 'find and train up' a Malay chief who would 'render some effectual assistance to the Government'. All the principal chiefs

1. Although at this time Residents were announced in the Strait Settlements Government Gazette as 'Her Majesty's British Resident', they were appointed by the Governor, subject to the approval of the Secretary of State, but their commission was not signed by the Queen and therefore were only entitled to the appellation of 'British Resident'. (Circular, in PGG, No. 89, 28 Sept. 1888, pp.54-5.)

2. For an account of the exchange of correspondence between Jervois and Lord Carnarvon on the Governor's policy see Cowan, Nineteenth Century Malaya, pp. 238-45.

were to be pensioned and the more influential were, as Jervois had first proposed, to form a council to advise on the 'Acts of the Executive Government'.

It was not explained what constituted the 'Executive Government', but the remainder of the instructions left little doubt that it must be some institution controlled by the British Resident.³ The Secretary of State described the Resident's function vaguely as 'giving influential and responsible advice', adding enigmatically, that it was a role 'well understood in the East.' Thereafter, however he catalogued the Resident's tasks as securing the 'maintenance of peace and law,' gaining 'supervision' of the collection of revenue and in general encouraging the development of the State's economy. How the first two of these could be achieved without some measure of executive control by the Resident is difficult to imagine as things stood in the Perak of 1876, and it must be concluded that the Secretary of State assumed that the powers which had devolved on the Resident since 1874 would continue to be exercised by him. In other words these instructions were an attempt to preserve the salient features of the policy approved in 1874 while

3. There is ample evidence in the Colonial files to indicate that the officials believed it would be necessary for the Resident of Perak to take control of the State in order to implement his own advice. For instance, R. Meade minuted 21 March 1876: 'I should govern the country in his name, assisted by a mixed Malay Council. We might then at some future date find that we have trained up a man to whom the Government could altogether be entrusted and who could be as enlightened a ruler as the Maharaja of Johore. If on the other hand it is found that these rajahs are too radically weak and vicious and that no good can be made of any of them, we can eventually adopt other means or actually annex the territory.' (In Jervois to Sec. State, 10 Feb. 1876, CO 273/83.)

formulating the framework for the Resident's continued control of the administration. Often referred to as the 'Residential System', it was a prescription for Resident rule - a resident British officer ruling in the Sultan's name and advised by a council of chiefs.⁴

Nevertheless, these instructions were sufficiently ambiguous to place the Resident in something of a dilemma; they did not explicitly authorise the exercise of executive powers and the assumption of such authority would clearly be taken only on his own initiative and responsibility. He might be reminded, as the Residents were in 1877, that it was 'essential' that they should 'possess sufficient influence to maintain, without question, the decisions of the Government',⁵ but this did not alter his personal responsibility for the State administration^{of} which the Resident was the executive head. Two incidents in 1878 illustrate the point. The Collector and Magistrate of Langat, James Innes, suspended on his own initiative Raja Mahmud's \$50 monthly allowance which had been provided for in the annual estimates by the Resident and approved by the Governor. When Robinson learnt of the decision, he reversed it on the grounds that 'the Residents are [not] armed with such arbitrary powers as to enable them to act' as Innes did without reference to the Resident,

4. Sec. State to Jervois, 1 June 1876, CO 809/7.

5. Col. Sec. to Resident, 15 Feb. 1877, Sel. Rec. Native 664/77, No. 47/77.

the State Council or the Governor.⁶ He agreed that the case was trivial, but believed that it involved an important principle, which also arose in another case in Selangor at the same time concerning the Tengku Panglima Besar. The Tengku was charged before the State Council, of which he was a member, with attempting to bribe the Collector of Bernam and on suspicion that he had raised a petition for the return of Raja Mahdi to Selangor. For his sins he was removed from Council, placed under a surety of ~~/~~1000 to appear before the Resident upon demand and had his allowance withdrawn.⁷ The Governor also reversed this decision explaining that it was 'in excess of the powers of a Resident' to dismiss a member of the State Council whose appointment had been approved by the Governor and 'submitted' to the Secretary of State.⁸ He then issued a circular to all Residents reminding them that they had been appointed to the Malay States as 'advisers, not as rulers' and should they 'disregard this principle' they would 'be held responsible if trouble springs out of their neglect of it.'⁹

6. Governor's minute, 15 May 1878, Governor's Letter Book, Vol.1, p. 59.

7. Resident to Col. Sec. 2 May 1878 enclosed in Robinson to Sec. State, 13 June 1878, CO 809/18; CO 273/94.

8. Col. Sec. to Resident, 21 May 1878 in Ibid.

9. Ibid.

The Residents' actual position was deliberately ignored with the unfortunate result that an opportunity was lost to determine the extent to which the Residents might exercise their authority and to define more precisely the Governor's jurisdiction in the Residents' administration. Hugh Low, the Resident of Perak, smarting under what C.P. Lucas called 'the unity of contradictions',¹⁰ was provoked to reply to the Governor's circular that he had first to 'create the Government to be advised' and this was what 'I have all along been trying to do.'¹¹ Robinson, while conceding that the Residents, especially the Resident of Perak, might be forced to exercise executive powers, replied that 'All the same, the fiction (if such you prefer to call it) that the Residents are merely advisers must be kept up, and here is just where the adroitness and ability of the Officer are so important.'¹²

The burden of responsibility for the successful administration of the Malay States was therefore to rest with the Residents. It was a responsibility which they readily accepted, for, as Swettenham observed, it was 'preferable to a position of impotence.'¹³

10. Lucas minute, 27 May 1878 in Robinson to Sec. State, 13 June 1878, CO 273/94.

11. Low to Robinson, 28 May 1878 in Ibid.

12. Robinson to Low 9 June 1878 in Ibid and Govenor's Letter Book, Vol.1.

13. F.A. Swettenham, British Malaya, (London, 1906) p. 221.

Nonetheless, the Residents took great care how they exercised their powers, as doubtless was the Governor's intention when he issued his circular. As a consequence new institutions grew up and old ones were modified as the Residents sought to sustain and legitimize their administration of the Malay States.

ii

The pacification of Perak and the discovery that 'Abdu'llah and other chiefs were implicated in the assassination of Birch left the country in some disarray. Troops which had been sent to suppress the uprising remained in control until a commission of enquiry had been held, and they left only after the dissident Malays had been removed from Perak early in 1877.¹⁴ Davidson who had become 'Queen's Commissioner' in April 1876, resigned his appointment at about the same time.¹⁵ Little is known of his administration, though it is clear that he had not been able to implement the Secretary of State's instructions of June 1876 before his departure. He did, however, establish the embryo of the new administration. The Residency was located at Kuala Kangsar, opposite the village of Raja Yusuf who was made 'Regent' in place of 'Abdu'llah. A 'Superintendent' of Lower

14. E. Sadka, (Ed.), 'The Journal of Sir Hugh Low, Perak, 1877', JMBRAS, Vol.XXVII, Pt. 4, 1954, p. 16.

15. Jervois to Sec. State, 5 Jan. 1877, CO 809/15 and (Tel) 8 Feb. 1877, CO 537/45.

Perak was established at Durian Sabatang and the Assistant Resident was charged with the control of Larut and the supervision of the State secretariat in Taiping where the prison, hospital and headquarters of the Perak Armed Police were located.¹⁶ But it was left to Hugh Low, his successor and the third Resident to Perak, to introduce more regular government along the lines set out in the Secretary of State's instructions.

In the years that followed, Low gradually extended his administrative control throughout the country, creating new 'Collectorates' each under the control of a 'Collector and Magistrate.' Revenue was levied at uniform rates throughout Perak by government officers except where duties were collected on such items as opium and spirits by revenue farmers. The Malay chiefs and penghulus relinquished their former powers, especially those which enabled them to levy taxes, in return for a place on the civil list. In 1877 these allowances fell short of the estimated ~~£~~48,310 but amounted in the following years to nearly ~~£~~45,000 of which the Regent received ~~£~~12,000.¹⁷ It is not clear what chiefs were entitled to allowances at this time, but they must have included those datos and penghulus appointed by Low soon after he took office as well as members of the negri waris. Between May 1877 and February of the following year he

16. Jervois to Sec. State, 6 Mar. 1877, CO 273/90.

17. Jervois to Sec. State, 28 Feb. 1877 and [T. Lister], Report on the Administration of the Federated Malay States, 1919, (Rangoon, 1920) Appendix D1, p. 18.

appointed forty-five headmen; in many cases he merely confirmed the titles of existing office holders such as the Dato' Panglima of Kinta and Raja Allang of Chendriang.¹⁸ Although Low thought headmen might be used more extensively in the general administration, his initial purpose in reappointing them was to reduce the cost of maintaining order in rural areas. He hoped that the penghulu and dato, exercising their traditional influence and authority and supported by small numbers of police would effectively maintain peace and order in their districts. The alternative of employing a large alien police force would, it was thought, only increase the hostility of the Malays towards the new order and be very expensive. As the Governor noted, 'buying the goodwill of the Penghulus' by the payment of a small salary was a 'wise political measure.'¹⁹

At two meetings of the newly formed State Council in February 1878, the scheme was sanctioned by the Regent in Council. Each penghulu or dato thereafter held his appointment under a surat kuasa (written authority) under the ruler's seal.²⁰ Their emoluments were

18. Low to Co. Sec. 8 July 1878, enclosed in Robinson to Sec. State, 27 Aug. 1878, CO 273/95.

19. Memo by Robinson to Col. Sec. 7 Aug. 1878 enclosed in Ibid. See this despatch for other enclosures on the background to these appointments and Swettenham's Memoranda in Weld to Sec. State, 28 May 1883, CO 273/120.

20. The proposal was first discussed at the first meeting of the Perak State Council; see PSC, 10 Sept. 1877, 4 and 6 Feb. 1878 in 'Council Minutes, Perak, 1877-79,' (Ed. by C.W. Harrison) PMS I, (Kuala Lumpur, 1907.)

set out in an Order in Council enacted the following September.²¹

Two categories were specified: one consisted of those receiving a salary who, in addition, were permitted to receive ten per cent. of all revenue raised in their mukims (in Perak this royalty was called chabut) and the other, those who would receive no fixed allowance but an income derived from twenty per cent. of all revenue (exclusive of duties on tin and tin-ore) collected in their mukims. While these arrangements raised the expenditure on allowances, it was increased still further by the payment of pensions to members of the negri waris.²² They were not entitled to chabut unless appointed penghulu or dato of a district. The Regent and his successor Raja Idris did receive chabut, however, but by virtue of being of their position as district headmen. The total expenditure on allowances in 1879, therefore, amounted to \$54,456, almost one-seventh of the total revenue and reached \$107,058.67 or about one-twentieth in 1888.²³

21. Quoted in PSC 6 Sept. 1878, Ibid.

22. The only published list of negri waris appears in FSC 26 Oct. 1882, in 'Council Minutes, Perak, 1880-1882', (Ed. R.J. Wilkinson), PMS II, (Kuala Lumpur, 1909.)

23. See Perak Revenue and Expenditure for 1879, SSGG, 4 June 1880 and Perak AR, 1888, p. 13. Swettenham writing many years later in connection with Brunei matters remarked that it was the Sultan and the chiefs, not the ra'ayat, that might cause trouble. He added, 'In a Malay State it is the Chiefs and not the people who count, and though we had more reason to be annoyed with the Malay Chiefs in the Malay States than is the case here (Brunei) we treated them well from the first, and have every reason to feel that we did right.' (F.A. Swettenham to Villiers, 14 Jan. 1904 in FO to CO, 27 Feb. 1904, CO 144/78.)

Compared with settling the claims of Malays to allowances and the appointment of district headmen, the task of finding a successor to 'Abdu'llah was relatively simple. The obvious choice was Raja Yusuf. He was after all the only important chief who apparently had not taken sides with either 'Abdu'llah or Ismail and he, with Raja Idris, had supported Jervois' policy.²⁴ Moreover, he possessed lineage which on two previous occasions had made him a contender for the sultanate. However, Jervois thought that Yusuf's tough, independent nature might make him as reluctant as 'Abdu'llah had been to accept the Resident's advice. For the time being, therefore, he was not made sultan, but appointed under the Governor's proclamation, provisionally, 'Chief Native Authority' and allowed to assume the title of 'Regent' and 'Raja Muda'.²⁵ In this way, Jervois hoped to bind the Raja to the new order, compelling him to obey the Resident's

24. With the removal of those chiefs implicated in Birch's murder, there were only two persons holding great offices of State; one of the Orang Besar Empat, the Orang Kaya Temenggong Paduka Raja and one of the Orang Besar Delapan, the Orang Kaya Kaya Panglima Kinta Sri Amar Bangsar di Raja. By 1905 there were only two vacancies in the former and three in the latter while the first official list of the Orang Besar Anambias compiled at the same time gave some twelve vacancies. (PSC, June 1905, in FGG, 22 Sept. 1905, p. 735.)

25. SSGG, 'Proclamation' 30 Mar. 1877, p. 225 and Jervois to Sec. State, 19 Aug. 1876, CO 809/10. With the exception of a reference to a 'Regent' in the eighteenth century by J.R. Wilkinson ('Events Prior to British ascendancy', PMS I, (Kuala Lumpur, 1908) p. 62,) there is no precedent in Perak's history of the appointment. Weld, writing in 1886, declared of Yusuf that he 'actually was Regent-Sultan and had the same dignity as if he was actually Sultan.' (Weld to Sec. State, 3 Apr. 1886, CO 273/139.)

instructions under threat of deposition.²⁶

The selection of a 'suitable' or amenable candidate to the sultanate was obviously important if the 'fiction' of government by advice was to be maintained. It was necessary, therefore, for the Governor to control the election of all sultans and as well the possible successors or Raja Mudas. Hence, when Raja Yusuf finally succeeded to the sultanate in 1886, his election was subject to the Governor's approval and circumscribed by the ruler pledging his support of the Resident's administration of Perak. As a consequence the election procedure and installation of the new sovereign underwent some important changes. In order that the election might gain the support of the country, Low proposed that a 'resolution' of the State Council 'adopting such nominations as might be suggested by sufficient authority' and the restitution of the regalia as necessary steps of his installation.²⁷ Accordingly, the State Council decided 'unanimously to recommend' to the Governor on 7 October 1886, that Raja Yusuf should be elevated to the dignity of Sultan.²⁸ There is

26. There is no doubt that Yusuf wished to become Sultan. Low recorded in his Journal that Yusuf's supporters were 'working for the Raja Muda to be made Sultan and Dris, his right-hand man, Raja Muda or Bendahara.' (Sadka, JMBRAS, Vol. XXVII, Pt. 4, p. 81.)

27. Low to Col. Sec., 15 Mar. 1877, enclosed in Weld to Sec. State, 2 Apr. 1886, CO 273/139.

28. PSC, 7 Oct. 1886, in C. 4958, p. 128.

no evidence that the remaining important chiefs were consulted or formally requested to give their opinion as Weld had proposed. Moreover, approval was gained, not from a council having its origins entrenched in Malay constitutional history, or consisting only of Malay chiefs, but from a body of Chinese, Europeans and as well Malays of which the Raja Muda was President.²⁹

The Colonial Office had consented to the restoration of the sultanate only if the change did not 'involve relaxation of existing control.'³⁰ The State Council, therefore, recommended that the new Sultan at his installation should take 'an oath to govern the country according to the existing system of administration, and

29. Khoo Boo Ann, a Chinese member who took his seat in Council for the first time on the same day, agreed with the resolution, but added that 'he remembered the government of the Rajas in former times, and considered that precautions should be taken against the return of such misgovernment as then existed; he trusts in the support of the English Government and the directions of the Secretary of State and instructions of His Excellency the Governor.' (Ibid).

30. Sec. State to Weld, 15 Aug. 1886, C. 4958, p. 127, R. Meade recommended this stipulation in a minute, 10 Aug. 1886, adding that Yusuf 'must not imagine he will thereby be emancipated from the small control over him.' (In Weld to Sec. State, 3 Apr. 1886, CO 273/139.)

under the control of the British Government.'³¹ It is not clear that any provision was made for breach of this oath, although the suggestion of the Assistant Resident (C.V. Creagh) that if the Sultan were found by the Council to have failed in fulfilling the conditions of appointment he would have to resign, may have been accepted. Although it was not necessary to remove any ruler, each of Raja Yusuf's successors gave a similar undertaking.

At the same Council meeting which nominated Raja Yusuf, a Raja Muda was chosen to replace him in order, as the Governor noted, that 'the succession will thereby be fixed and legally settled.'³² In this way Weld hoped to obviate the hiatus in the dynastic succession

31. PSC, 7 Oct. 1886, C. 4958, p. 129. There is no copy of the oath Sultan Yusuf was required to take upon his installation. However, the oath taken by Sultan Idris was published in the Perak Government Gazette at his installation. Described as the 'Oath of Office,' the document was signed by the Sultan and witnessed by the British Resident. 'I, Sultan Idris bin Almarham Iskander Sah[sic.] Yang-di-per Tuan of the State of Perak, do hereby solemnly promise and swear that I will truly and faithfully rule my kingdom of Perak in accordance with law, and the established Order of Government under the protection of Her Most Gracious Majesty the Queen of England and Empress of India, and Her heir and successors for ever. I swear this in the presence of Almighty God.' (PGG, No. 125, 6 Apr. 1889, p. 302.) The Resident in a private interview with Yusuf on 2 October 1886, gained the admission from the Raja Muda that 'if he had the fullest power to change the present constitution from the former state of things, he should never dream of doing so, but would, on the contrary, ask for the support of England as it is now accorded to him and to the State.' (PSC, 7 Oct. 1886, C. 4958, p. 129.)

32. Weld to Low, 1 Sept. 1886, Ibid. p. 127.

which before British intervention often resulted in violent quarrels between the contenders for the sultanate. The arrangement had the advantage of limiting the contest to the level of the office of Raja Muda. Hence, when Raja Yusuf died in 1887, Raja Idris succeeded him, as was customary, before the late sultan's burial. His formal installation did not take place until 1889.³³

The appointment of an amenable candidate to the sultanate was, however, no guarantee that he would readily abdicate his right to exercise his prerogatives. Indeed, when Raja Yusuf became Regent, he, like 'Abdu'llah, attempted to proclaim orders in his own name. On several occasions he issued proclamations to which he sought to have Low attach his signature. Low, of course, refused to do so unless they had been drafted or approved by himself; as he remarked to the Regent, in such matters 'there is no escape but following' the Resident's 'advice'.³⁴ The establishment of a State council was designed to constrain the ruler in the exercise of these powers.

Jervois' original suggestion of a 'Malay Council' gave way in his revised proposals after the Perak disturbance to a 'Mixed

33. Although no Raja Muda was ever set-aside, when the office of Raja Bendahara was restored in 1905, Sir John Anderson, Permanent Under-Secretary of State, laid down that succession from Raja Bendahara to Raja Muda and to Sultan should not be made 'unless he is in every way suitable.' (Minute by Anderson, 18 Apr. 1914, in Young to Sec. State, 17 Mar. 1914, CO 273/410.)

34. Sadka, JMBRAS, Vol. XXVII, Pt. 4, pp. 72 and 85; see also pp. 48 and 97-8.

Council' - 'mixed' denoting the council's membership consisting of Malays, both of negri waris and non-royal, and Chinese as well as the European Residents.³⁵ As its composition suggests, no such council found a precedent in the Perak political history.³⁶ There were the theoretical assemblies of the Orang Besar Empat and Delapan, but they were never formally convened. There are references to gatherings of chiefs on important occasions such as the seance in 1875, but these were ad hoc assemblies.

The constitution of the Perak council was proclaimed in 1877 in a titah under the seals of the Regent and Resident.³⁷ It did not

35. Jervois to Sec. State, 10 Feb. 1876, CO 273/83. The 'Malay Council' was to consist of seven members: 'Abdu'llah, Ismail, the Bendahara, Rajas Yusuf and Idris and the Commissioner and his Assistant. Yusuf and Idris with the two British officers were to be the 'working members' of the Council. (Jervois to Sec. State, 16 Oct. 1875, CO 809/6. Raja Idris showed Low correspondence from the Governor, dated 1875, which outlined these proposals. (Sadka, op. cit., p. 81.) The inclusion of the Chinese startled the Colonial Office. Bramston minuted, 30 July 1877, emphatically that their membership in Council 'is utterly at variance with the old Perak constitution and traditions.' However, he explained the anomaly away by adding that 'we are admittedly governing Perak now with the English or perhaps "international" ideas and principles.' (OAG to Sec. State, 23 June 1877, CO 273/91.)

36. Winstedt, writing in 1931, declared; 'Obviously the constitution of the Perak State Council under British protection followed no Malay precedent at all.' (Memo by R.O. Winstedt, covered by letter dated 18 June 1931, Clementi Papers.)

37. The council was not formed until 'Abdu'llah and the other chiefs had left the country. (Jervois to Sec. State, 22 Mar. 1877, CO 273/90; Minute by Meade, 18 May 1877, in Jervois to Sec. State, 28 Feb. 1877, CO 273/90.) A translation of the titah is to be found in the Taiping Museum, Perak. It closely resembled Jervois memorandum on the 'Constitution of the Selangor State Council', (enclosed in Jervois to Sec. State, 22 Mar. 1877, Ibid.)

directly establish the council, but rather announced that the 'Government' of Perak had 'established a Council' to be called the 'Council of Perak.' It was to consist of eight members 'appointed under the seal of the Raja Muda and of the Resident' and to be convened by 'letters of summons from the Raja Muda bearing the seal of the Resident.'³⁸ Of particular importance was article six which gave the Resident formal powers over the decisions of the Council. It declared that every decision must first be communicated to the Honourable the Raja Muda and to the Resident and must receive the sanction of the Resident in all respects.' This was de jure a significant extension of the Resident's powers. In addition to those granted at Pangkor, he now secured control over all decisions of Council.

The titah in the legal sense did not alter the ruler's right to enact laws; in no way was he compelled to seek the advice of the Council on such matters. He could be advised to do so. Further the

38. Article I of the titah directs the special attention of the 'Members of the deliberative Assembly of the territory of Perak' to the establishment of the Council and appoints these members as councillors to the new body. Although the first recorded meeting of council took place on 10 September 1877, the Resident of Perak reviewing the development of the council in 1934 claimed that the council was formed in June 1877. (G.E. Cator, 'Brief Notes on the History of the Past Organisation of the Perak State Council,' 23 Jan. 1934, Clementi Papers.)

composition and working of the Council tended to compel the ruler to seek its advice. Actually the titah failed to describe the Council's functions, beyond urging its members to increase immigration of 'foreigners', to encourage the 'introduction of capital' and to preserve private property. The Resident, however, in his address to the inaugural meeting, explained that 'all important subjects' would be placed before the Council for its 'advice and assistance' especially when those subjects might 'involve extensive modifications of existing laws or customs, or be considered of general interest.'³⁹ In practice, the Resident decided what constituted 'important subjects'; political expediency and notions of crown colony practice tending to form his guide. Depending upon the subject matter, Council, therefore, could be said to have constituted itself variously as an executive legislative and judicial body. For instance, in its judicial capacity it had to confirm all capital sentences and it functioned as an executive council when it advised the ruler on the appointment of district chiefs or penghulus. But its most important function was legislative. Assuming the right to advise on all proposed legislation, the Council came to form an integral part of the legislative process of Perak. Although the Sultan was the supreme

39. PSC., 10 Sept. 1877, PMS I. The Regent opened the first meeting of 1879 with the declaration that the 'Council has been called together on this occasion to consider and advise on important business of State.' (PSC., 27 Feb. 1879, Ibid.)

legislative authority, 'Orders in Council' were in fact enacted by the Sultan in Council with the advice of the British Resident.

Article three of the titah named the first eight members of Council who represented the important political and commercial interests in Perak at that time.⁴⁰ Besides the Resident and his Assistant, there were Rajas Yusuf and Idris, one of the two Orang Besar, the Dato' Temenggong, the Mantri's agent, 'Abdul Karim bin Ibrahim, and the two rival Chinese Capitans of the Hai San and Ghee Hin in Perak, Chang Ah Kwi and Chan Ah Yam.⁴¹ The Regent, as did

40. Until 1885 nominations to the Council were made upon the approval of the Secretary of State. Thereafter, it was deemed no longer necessary for, as the Colonial Office pointed out, these appointments were outside their jurisdiction. (Weld to Sec. State, 23 July 1885, CO 273/135.)

41. Yusuf and Idris had been opposed to council membership on any other basis than heredity, but eventually bowed to the Resident's wish. (Sadka, JMBRAS, Vol. XXVII, Pt. 4, p. 81.) No doubt both feared that membership on any other principal might lead to the inclusion of their opponents, the supporters of 'Abdu'llah or the Mantri and Ismail. See, for instance, their opposition to the appointment of Shaikh Mohamed Taib, the father-in-law to Sultan 'Abdu'llah's son, as Chief Kadzi. (Ibid., p. 37 fn. 30; PSC 4 Mar. 1879, PMS I.) Low, conscious of this antagonism, made use of it to his advantage, (Sadka, op. cit., p. 99.) 'Abdul Karim was appointed in the place of the Panglima Kinta who failed to pay his respects to the new Resident. (Ibid., pp. 81 and 50, fn. 70; Wynne, op. cit., p. 332.) The Colonial Office thought it was inadvisable to give the heads of secret societies seats in Council, (OAG to Sec. State, 23 June 1877, CO 273/91) but Low, mistakenly, thought they were then of 'little consideration'. (Sadka, op. cit., p. 96.) For an account of other appointment up to 1894 and their significance, see E. Sadka, 'State Council in Perak and Selangor, 1877-1895, '(Ed. K.G. Tregonning) Papers on Malayan History, (Singapore, 1962), p. 98, fn. 19.

his successors, took his seat as President of the Council, but this did not enable him to control the proceedings in any way. Instead, the Resident introduced the business, invited the comments of the members and called for divisions on contentious subjects.⁴²

The Regent, although exercising a special influence as ruler, participated as any other members in the proceedings and similarly was entitled to only one vote. He held no veto, though on occasion his vigorous opposition to a measure could lead to its withdrawal.⁴³

In one sense, the establishment of the Council under the Resident's control considerably widened the ruler's authority. For the first time his law was effective throughout Perak; as the area of government widened, the ruler's de jure powers increased correspondingly. The exercise of his prerogatives, however, was now constrained by the Council as well as by the treaty arrangements which

42. Between 1879 and 1881 there appears to have existed an inner council called the 'executive branch', the membership of which appears to have consisted of the Regent, Raja Idris and the Dato' Temenggong as well as the Resident and described as all 'residing in Kuala Kangsar.' (See PSC, 19 June, 1881, PMS 1.) On occasion special committees were formed to deal with problems requiring more detailed investigation than a single sitting of Council could afford. (See PSC, 21 Nov. 1889, in FGG, No. 404, 20 Dec. 1889, p. 858 and PSC, 3 and 4 July 1893, in FGG, No. 494, 9 Aug. 1893, p. 651.)

43. For example, when an increase in the allowances of several persons was referred back to Council by the Officer Administering Government in 1890, the Sultan's outspoken opposition was sufficient to prevent any amendment. (PSC, 22 Dec. 1890, in FGG, No. 28, 23 Jan. 1891, p. 29.)

required him to accept the advice of a Resident.

The establishment of the Council also fulfilled another important function. While it proved an effective institution to controlling the sultanate, it served as the principal device for legitimizing¹⁴³ Resident rule in Perak. The necessity to reconcile his ambiguous instructions, drove the Resident to cloak his assumption of executive powers in a mantle of legal authority. Thus, his control of the proceedings and decisions of Council enabled him to delegate to his office the authority necessary to control the government of Perak. This is reflected in an interesting way in the language employed in the enactments. Low never referred to his own office in the Orders in Council he drafted. No doubt he was ever conscious of preserving the 'fiction' of Resident advice and, therefore, delegated executive powers to the 'Government'. However, his successor, Swettenham, in more settled times, was prepared, juridicially, to reveal the full authority of the Resident by replacing 'Government' with 'British Resident.' Indeed, one Order in Council even defined 'Government' to mean 'the British Resident acting by and with the authority and consent of His Highness the Sultan.'⁴⁴

⁴⁴. Order in Council, 11 of 1890.

iii

It is interesting to turn to Selangor where one might have expected the establishment of Resident rule to have followed a different course. Selangor experienced no violent, overt opposition to British intervention as in Perak and the Sultan and his Wakil Mutlak, Tengku Zia'u'd-din, appeared to welcome the appointment of a British officer to Selangor. Notwithstanding these differences^s, the form which Resident rule took in Selangor closely followed that of Perak. The decision not to administer Selangor^{through} the Malay chiefs and penghulus had been taken just before Swettenham departed from Selangor and in February 1876 the Sultan issued a proclamation ordering the collection of taxes to be controlled by the Resident.⁴⁵ Captain Bloomfield Douglas,⁴⁶ the second British Resident, followed Davidson in making Klang his headquarters from whence he gradually established his administrative control over the State. Officers entitled 'Collector and Magistrate' were established at Langat, Kuala Selangor and Bernam while the

45. Proclamation, dated 21 Feb. 1876 enclosed in Jervois to Sec. State, 5 Apr. 1876, CO 809/7; SSGG, 25 Mar. 1876.

46. Douglas served with James Brooke in Sarawak, worked in South Australia before joining the Straits civil service in 1874. (J.M. Gullick, 'Kuala Lumpur, 1880-95,' JMBRAS, Vol. XXVIII, Pt. 4, (1955) pp. 22-3.) He became acting Assistant Resident in November 1875 (SSGG, No. 286, 19 Nov. 1875, p. 873,) and acting Resident in April 1876. (SSGG, No. 84, 7 Apr. 1876, p. 153.) A contemporary description of him speaks of 'a tall, vigorous, elderly man, with white hair, a florid complexion, and a strong voice heard everywhere in authoritative tone' against whom, the same writer wrote, 'there may be many a vendetta.' (I. Bird, The Golden Chersonese, (London, 1883), p. 217.)

interior, especially the mining district around Kuala Lumpur was left, for the time being, in charge of the Capitan China, Yap Ah Loy.⁴⁷ The Malay chiefs who formerly controlled these districts and others in the interior were deprived of their powers. They were permitted to retain their positions and paid fixed allowances, but no longer allowed to collect taxes or administer justice.⁴⁸

Although a number of the chiefs, such as Rajas Hassan and Kahar, assisted the Magistrates in hearing cases, they were not linked to the administration in the same way as the penghulus were in Perak until 1883.

Douglas was not entirely free from the necessity of co-operating with the Malays in governing the country. Although Sultan 'Abdu'l-Samad had withdrawn from the affairs of state, Tengku

Zia'u'd-din showed little interest in quitting his position of Wakil

47. The district of Lukut, after a protracted and acrimonious negotiation between Raja Bot and the Resident and Governor, was ceded to Sungai Ujong in 1878. (Maxwell and Gibson, Treaties, pp. 212-3.) Bernam, in 1880, was, for administrative purposes, placed under the jurisdiction of Perak. It was returned to the control of Selangor in 1889. (Perak Government Notification, 12 Sept. 1889.)

48. Although only a dozen chiefs received allowances, the total expenditure to this account amounted to nearly one-fifth of the revenue in 1877. Several received chabut but who these were is not clear. This number was reduced in 1883 when the penghulu system was introduced; apart from special pensions to such persons as Tengku Zia'u'd-din, only six persons received allowances in 1887, two sons of the Sultan, Rajas Kahar, Nosah, two sons of the late Sultan Muhammad, Rajas Laut and Mahmud, and the Tengku Panglima Besar, Raja Mahmud. (SSC, 16 July, 1887.)

Mutlak. He had invested heavily in Selangor and had expended a considerable fortune to winning the civil war, so that as de facto ruler of much of Selangor he was unlikely to surrender the reigns of power immediately. He quarrelled with Davidson in 1874, but is reported to have worked closely with him until Davidson was appointed Resident of Perak.⁴⁹ Under Douglas, however, he was gradually excluded from taking any effective part in the country's administration and was finally forced to retire in 1878.

The position of the Tengku is of note, for, unlike Sultan 'Abdu'llah and the Dato' Klana Putra, he was the one Malay chief supported by the Governor who held effective control of at least the most important areas of his State. Not only did he have actual control of Klang, Ulu Langat and Kuala Selangor, but also he possessed the legal authority under the Sultan's surat kuasa to govern the country. It could be argued that he alone of the three rulers had the ability and desire to accept and implement the Resident's advice.⁵⁰ For example, he successfully carried out Swettenham's scheme for collecting the taxes at Klang in 1874.

49. Swettenham Journals, 25 Nov. 1874.

50. See Swettenham's Journals. However in 1878, Swettenham commented that 'without British Protection he would have lost his position 'if not in name at least in effect.' (Swettenham memo. enclosed in Robinson to Sec. State, 18 June 1878, CO 273/94.)

But Swettenham, and perhaps Davidson, found that the existing political system was unsuitable for the rapid execution of the extensive reforms they envisaged. Consequently, the position of the Wakil Mutlak became superfluous. The presence of the Resident, as Swettenham noted in 1878 had 'complicated' the Tengku's position and he unable to see what he could 'find to do in Selangor in the way of official duties further than as President of the Council.' Douglas was not bound to the Tengku in the same way as Davidson had been. He appears to have simply ignored him. It suited him instead to keep his own counsel and when he found it necessary to seek Malay advice or co-operation, he went directly to the Sultan, bypassing the Wakil Mutlak. Eventually, the Tengku's growing isolation in the business of government, his personal dislike of Douglas, and the mounting pressure from the Governor brought about his resignation in 1878.⁵¹

With his departure, the post of Wakil Mutlak was allowed to lapse. Sultan 'Abdu'l-Samad continued to remain in virtual retirement in Langat, occasionally appearing in the State Council when it met in Langat. He remained, as Douglas noted, 'at all times careless in

51. Tengku Zia'u'd-din left Selangor for two periods in 1876 and 1878. He retired at the end of 1878 on a gratuity of \$30,000 and a monthly pension of \$500 and \$200 for his wife and daughter. (Ibid. and Middlebrooke, JMBRAS, Vol. XXIV, Pt. 2, p. 87.)

assuming the reins of Government' and 'willingly' placed 'his power in the hands' of the Resident.⁵² Nevertheless, while Sultan 'Abdu'l-Samad may have enjoyed this arrangement, there was no assurance that his successor would do so. Hence, when Raja Musa - the Raja Muda at the time of British intervention - died in 1884, the question of a successor to the office was carefully controlled by the Resident and Governor. Although Selangor custom dictated that the eldest sons should succeed by election to the title of Raja Muda, Musa's second son, Raja Suliaman, was chosen to fill the vacant title.⁵³ He was not, however, appointed immediately, but tried as to his suitability of being allowed to take over the late Raja Muda's responsibilities.⁵⁴ Finally in 1887, when the Sultan asked that a successor be made in order to avoid disputes after his death, Suliaman was elected Raja Muda after the opinions of eighty-six chiefs had been canvassed by the Resident and installed in August 1889.⁵⁵ He succeeded to the title under the Sultan's surat kuasa

52. British Resident to Co. Sec. enclosed in Robinson to Sec. State, 13 June 1878, CO 273/94.

53. 'Memorial presented on behalf of His Highness Tunngu Besar Shah, Tunngu Panglima Besar of Selangor, concerning his right and claim to be appointed Raja Muda of Selangor,' Appendix II, p. 22; Mitchell to Sec. State, 24 Mar. 1898, CO 273/239.

54. Smith to Sec. State, 9 Oct. 1884, CO 273/130.

55. SSC, 13 Feb. 1898. Of the eighty-six asked by letter to give an opinion, 17 were absent from the State, 5 sent no answer, 1 refused to vote, 25 asked the Resident to decide for them, one voted for Raja Laut and 37 voted for Raja Suliaman.

which was drafted and issued with the advice of the Resident and stipulated that in matters of state he would do nothing 'without conferring and consulting the Resident and the Members of the State Council first.'⁵⁶ Later in the same year when 'Abdu'l-Samad died, the State Council at the request of the acting Resident nominated Suliaman as his successor and submitted his name to the High Commissioner (as the Governor was then called) for his 'sanction'.⁵⁷ At his installation the new Sultan accordingly declared that his succession had been achieved with the 'consent' and 'advice' of the Secretary of State.⁵⁸

As in Perak, a council of Malays was established in accordance with the Secretary of State's instructions. The titah - which was similar to that of Perak - outlined the purpose of the council and provided for a membership of seven persons whom it named and who were to hold their membership 'under the Sultan's seal' and 'during

56. 'Memorial', p. 25.

57. SSC, 13 Feb. 1898.

58. See translation of Sultan's speech in Mitchell to Sec. State, 10 Mar. 1898, CO 273/239. The principle that the Resident could decide on the suitability of the candidate for the sultanate was challenged in 1936 by the Sultan and several of the important Selangor chiefs. The Tengku Panglima Besar had been set aside as Raja Muda in 1934 on the ground that he was an unsuitable successor. The chiefs claimed that the decision went against the Selangor custom of the eldest son succeeding to the sultanate, but they failed to persuade the Secretary of State to rescind his decision. ('Memorial').

His Highness's pleasure.'⁵⁹ In contrast to the Perak titah, it failed - curiously, for Jervois probably drafted them both - to give the Resident sufficient power to control the decisions of the 'State Council'; it merely stipulated that all decisions were to be 'submitted to the Sultan for his Highness's sanction.' It went on to explain that it was establishing the council with a view to associating the 'Government' in implementing the Council's decisions.⁶⁰ Among other matters, the State Council was expected to consider 'proposals for taxation, appointment, concessions', and 'the institution or abolition of laws.' Like the Perak Council, therefore, its [§]jurisdiction was not limited only to legislative matters.

In practice, Douglas completely dominated the Council's proceedings and its decisions. As he himself noted in 1879, the

59. No copy of the titah has been traced, but it probably was identical to a memorandum drafted by Jervois and enclosed in a despatch to the Secretary of State. He mentions in it that he had 'directed the acting Resident, with the concurrence of the Sultan, to furnish a copy of it to each member.' (Jervois to Sec. State, 22 Mar. 1877, CO 273/90.) In a memorandum entitled 'Notes on the Past Organisation and Present Constitution of the Selangor State Council,' the Resident of Selangor in 1932 wrote of the 'Sultan's Commission,' which he claimed was issued in May 1876 although the first meeting did not take place until 1 April, 1877. (Clementi Papers.)

60. Seven members were named in the titah; the Wakil Mutlak as ex officio President, two English officers, the Resident and the Collector and Magistrate, Langat, Raja Kahar, the Sultan's son, Tengku Panglima Besar, the Sultan's brother-in-law, Syed Zin, the Tengku Zia'u'd-din's agent and the Capitan China, Yap Ah Loy.

Resident 'prepares the business for each meeting, carried the measure and then advises the Sultan to assent to the minutes as a matter of form.'⁶¹ Indeed, the Selangor State Council, in as much as the minutes of the proceedings reveal, failed to develop such a dynamic and useful organ of government as it did in Perak.⁶² This was no doubt due as much to Douglas' want of confidence in the opinions of the Malay and Chinese members as to his own inability to speak Malay. There was also not the same urgency in Selangor as in Perak to secure the close co-operation of the Malays in governing the country. Low, by inclination and of necessity, made considerable use of the Perak Council to persuade the Malay chiefs to accept his policies and to assist in implementing them. In Selangor, however, Douglas found few chiefs of authority to challenge his position and when they were encountered he chose to break them or drive them out rather than persuade them to participate in the carrying out of his plans. Tengku Zia'u'd-din only presided at three meetings and soon

61. British Resident to Col. Sec. 27 Dec. 1879, Sel. Rec. 390/79, cited in Sadka, Papers on Malayan History, p. 108.

62. Governor Robinson writing of the Selangor State Council a year after its establishment remarked that its creation was a 'successful experiment, though hardly to the same extent as in Perak, the uncertain position of the President, Tunku dia Udin, having no doubt had its effect in the deliberations of the working of the Council. (Robinson to Sec. State, 10 Sept., 1878, CO 809/18 and C 2410, pp. 8-12.)

retired from his position as Wakil Mutlak. Douglas also tried, though without success, to have Yap Ah Loy removed as Capitan China and in 1878, as already observed, he tried to dismiss the very influential Tengku Panglima Besar.⁶³

Nevertheless, ^{the} Resident made frequent use of the State Council, but usually to give legal sanction to his own authority in Selangor. He was not an administrator by training and often came in for criticism from the Governor. The rebuke brought upon himself by his dismissal of Tengku Panglima Besar, especially, drove him to take pains to protect himself in law. This, of course, does not mean that the legislation was well drafted or achieved his purpose of delegating sufficient powers to his office. However, his method was suggested by his frequent convening of the State Council and the enactment of nearly three times as many laws during his term of office as Low did for the same period in Perak.⁶⁴ By contrast, his successor, Swettenham, seldom convened the Selangor Council. The respect Swettenham commanded among his superiors for his knowledge of the Malay States tended to give him considerable freedom in

63. Act. Col. Sec. to British Resident, 24 Oct. 1876, Sel. Rec. Native 6057/76.

64. One device Douglas often resorted to gave him wide authority to draft 'Orders in Council'. He simply persuaded Council to pass a resolution requesting the 'Government' to make a regulation on a given subject. (See SSC 30 July, 1881, and J.H.M. Robson, Laws of Selangor, 1877-1895, (Kuala Lumpur, 1896), p. ix).

administering Selangor. Doubtless, for this reason, he held fewer meetings than Douglas and, it would appear from the minutes, limited it almost entirely to enacting legislation. Even in this field he ignored the usual legislative procedure by frequently issuing in his own name 'Government Proclamations' with the result that by the end of 1889, only two-thirds of the Selangor regulations possessing force of law had been enacted by the Sultan in Council.⁶⁵

iv.

The extension of Resident rule to those States which comprise modern Negri Sembilan was a gradual process culminating in their confederation in 1895 under one Resident. However, the way in which the Residents established their authority contrasted sharply between the different States. In Sungai Ujong and Jelebu the Resident's control of the administration was direct and immediate, the old order being set aside, but in the Sri Menanti confederation, Rembau and Tampin the Resident governed through the existing institutions.

Captain Tatham who had been left in Sungai Ujong at the end of 1874 died early the following year and was replaced by Captain P.J. Murray, R.N. who remained British Resident until his death

⁶⁵. A list of many of these 'Government Proclamations' appear in O. Kemp, Selangor State Regulations and Rules and Orders, 18 April, 1877 to 31 Dec. 1889, (Kuala Lumpur, 1892).

in April 1881.⁶⁶ Establishing his headquarters near Seremban, Murray governed the Sungai Ujong in the name of the Dato 'Klana Putra. The Klana, Dato' Shahbandar and chiefs of the waris clans were placed on a civil list⁶⁷ while Murray administered the country with the assistance of a collector of revenue at Permantang Pasir and a small police force of ninety-five men under a European officer. As one contemporary description of Murray emphatically declared, 'he is the Government.'⁶⁸ It was an arrangement which no doubt suited the Dato' Klana who spent most of his time in Malacca.

Murray did not follow the Perak example of establishing a State Council for, as the Governor noted, there were too few chiefs apart from the Klana of any calibre to participate in it.⁶⁹ Gullick has published a document of 1878 bearing the Klana's seal which proclaims the formation of such a council: there is, however, no evidence that it was ever convened.⁷⁰ Indeed, during 1880-1, when Murray was experiencing opposition to the new land regulations, Weld

66. Gullick, JMBRAS, Vol.XXII, Pt. 2, p. 21; the Sungai Ujong AR, 1879, gives the sum paid out in allowances as #14,640 from a revenue of #76,631.

67. SSGG, No. 119, 1 May 1875, p. 373. Murray had spent two years exploring in south Africa, later served for some years in the Royal Navy and during his naval service in the Straits acquired a knowledge of Malay. (Jervois to Sec. State, 20 Apr. 1876, CO 273/80 and J.M. Gullick, 'The War with Yam Tuan Antah', JMBRAS, Vol.XXVII, Pt. I (1954), p. 3.)

68. Bird, op. cit., p. 186.

69. Jervois to Sec. State.

70. Gullick, JMBRAS, Vol.XXII, Pt. II, p. 68.

tried to persuade him to establish one as it would give the chiefs 'importance and status' and bind them to the council's decisions.⁷¹ Murray apparently refused to accept the suggestion and it was left to his successor W.F.B. Paul to do so.

Paul remained in Sungai Ujong for twelve years.⁷² Whether through ill-health or the want of administrative ability, he mismanaged the State's meagre resources. He had served in Perak before coming to Sungai Ujong and, no doubt influenced by his experience there, introduced reforms which although suitable for Perak proved too expensive and impracticable for the tiny Sungai Ujong. Among these changes he established a State Council which brought the form of Resident rule in Sungai Ujong more nearly in line with that developed elsewhere. It was convened for the first time on 24 July 1883.⁷³ The members comprised of the Dato' Klana Putra as President, the Resident, the two other principal chiefs, the Dato' Shahbandar and the Dato' Muda of Linggi, and one other Malay, two Chinese and the Kadzi.⁷⁴ No titah describing its

71. Weld to Murray, 20 Feb. 1881 and 16 Mar. 1881, Governor's Letter Book, Vol.I.

72. Paul began his career in the Malay States as a deputy Commissioner in Perak and later became Superintendent of Lower Perak. Previously he had served in Sarawak and the Gold Coast. He was made British Resident ~~to~~ Sungai Ujong in June 1881. (Smith to Sec. State, 28 Nov. 1892, CO 273/188 and SSGG, No. 327, 22 July 1881, p. 668.)

73. Weld to Sec. State, 29 Jan. 1883, CO 273/119 and Sungai Ujong AR, 1883, C. 4192, p. 63.

74. 'Notes on the history of the constitution and organisation of the State Council of Negri Sembilan, 1932,' Clementi Papers.

constitution appears to exist, but as the proceedings of the council suggest it functioned in much the same way as the councils of Perak and Selangor. It met less frequently than in the other State - about twice a year - but performed the same important function of binding the leading members of each community to the Resident's policies and of providing legal authority for the Resident's administration.

The territorial limits of the Resident's administration were extended twice, once with the cession of Lukut and Sungai Raya from Selangor to Sungai Ujong in 1878 and again with appointment of a British officer to Jelebu after 1883. Under the 1883 agreement with Britain, Jelebu agreed to accept the advice and assistance of the Sungai Ujong Resident in matters of 'administration and revenue.' After some delay a Collector and Magistrate, directly responsible to the Resident, was appointed to Jelebu in June 1885.⁷⁵ In the second agreement of the following year, the Collector's control of the administration of Jelebu was formally recognised in respect of the collection of revenue, the alienation of land and the administration of justice. The Dato' Penghulu, the five waris chiefs and three lembagas were granted allowances while the waris were, in addition, entitled to receive a royalty of \$1.50 per bhara of tin

75. Sungai Ujong AR, 1884, p. 7. The difficulty in finding someone for this office accounts for the long delay between the treaty and the appointment.

collected by the Collector. They were also to get ten per cent of all fines, fees or forfeitures levied in their own courts, the remainder being paid into the State treasury.⁷⁶

As communications improved and the administration of the two States became more closely bound together, it became necessary to extend the legislative process of Sungai Ujong to Jelebu and thereby give effect to Sungai Ujong laws being enforced in Jelebu. On occasion, therefore, the Dato' Penghulu and Collector of Jelebu attended the Sungai Ujong State Council when it enacted legislation purporting to apply to both States.⁷⁷ In March 1891 the Dato' Penghulu and the Capitan China for Jelebu became regular members of the Council, and Orders in Council were formally enacted in the name of the two rulers 'with the advice' of the Resident.⁷⁸ Only three years later was any attempt made to give the arrangement any legal authority; the State Council passed a law declaring its past and future Orders to be laws of Jelebu as well as of Sungai Ujong.⁷⁹

In the remaining States - the Sri Menanti confederation, Rembau and Tampin - control of their internal affairs was secured and

76. Maxwell and Gibson, Treaties, p. 55.

77. SUSC, 8 Oct. 1887.

78. Ibid.; Sungai Ujong AR, 1891, p.

79. Regulation V of 1894, 'Uniformity of Laws'.

maintained largely by enforcing what Weld called the 'ancient constitution.' Just what Weld meant by this term is not clear, but he probably had in mind those rules which governed the relationship between the raja, lembaga and waris chief and embedded in adat. In 1883 very little was known about these and they only gradually became understood as British officers grappled with the day to day problems of governing these States. Nevertheless, in so far as it could be ascertained from the chiefs themselves, this constitution became the foundation of Weld's policy.⁸⁰ It was an approach which offered several advantages. By insisting that the chiefs adhere to a traditional political system, decisions taken within that context would probably have the support of the ra'ayat and chiefs alike. It would be especially useful if the Governor, or his agent, was the arbiter of these disputes. Moreover, as the economy of these States was largely subsistence agriculture, and therefore unable to support a large establishment of British administrators, the preservation of existing institutions would eventually enable relatively few officers to govern the country through the chiefs.

An element of this policy could be said to have been realised in Jervois' confederation of Sri Menanti and Johol in 1876. But in Weld's opinion, Jervois had made a 'great mistake' when he gave the Maharaja

80. Weld to Sec. State, 29 Jan. 1883, CO 273/119.

of Johore permission in the treaty of confederation and another treaty with Rembau the following year to interfere in their internal disputes:⁸¹ it only led to further disruptions as the Maharaja sought to re-establish the Yam Tuan's authority over the Penghulus. Although Weld had to admit to the Maharaja's right to intervene, he warned him as early as 1880 that he reserved the right to decide how disputes should be settled in these States; as he remarked in a letter to him, 'I represent the Queen whose decision must be final.'⁸² Thereafter, he endeavoured to minimize the effects of Jervois' policy and eventually was successful in bringing about its reversal. In treaties with Rembau and Jelebu in 1883 and Sri Menanti in 1886 the Governor displaced the Maharaja as the final arbiter of disputes in these States.⁸³

Weld then gradually extended his control over their internal affairs. The mismanagement of funds lent for the building of roads and paths led in 1884 to the appointment of a 'Clerk of Works', responsible to the Resident Councillor of Malacca, to supervise the

81. Weld to Irving, 1 Feb. 1882, Governor's Letter Book, Vol.I.

82. Weld to Maharaja of Johore, 19 Oct. 1880, Ibid.

83. See Chapter I, pp.33-4.

allocation of the loans and the construction work.⁸⁴ In July, the following year, this officer became acting 'Collector and Magistrate' to Sri Menanti and established his headquarters at Kuala Pihal, chosen for its proximity to the Muar River and the small mining operations at Betong and Jempol. In December 1886 Martin Lister was appointed to the post.⁸⁵ Weld chose him especially for his knowledge of the country where he once had a plantation, for his age and experience which, he believed, would enable him to give mature consideration of the problems of Sri Menanti and Johol. In a letter explaining his appointment Weld wrote that he was to go there as a 'Commissioner, to advise and organise, as well as to act as Magistrate and Collector.'⁸⁶ Weld had intended Lister to remain only for a few months, but he stayed for ten years during which time he constructed an administration that extended beyond Sri Menanti and Johol to include Rembau and Tampin.

Unfortunately the details of many of the disputes which Lister eventually settled have not been fully recorded. What is of importance here is the basis upon which they were secured. Acting under the authority of the Sri Menanti treaty of 1886, he intervened,

84. L.J. Cazalas held the appointment of Clerk of Works before acting as Collector and Magistrate from 1 July 1885; he was succeeded by R.N. Bland in 8 June 1886. (Resident Councillor Report, 29 Sept. 1885; 'Report on the Small Native States bordering Malacca for the year 1886', SSLC, Paper, 1886; Weld to Sec. State, 24 Dec. 1886, CO 273/141)

85. Negri Sembilan AR, 1893, p. 11.

86. Weld to Rodger, (1 Sept. 1886), cited in Lovat, op. cit., p. 390.

either on his own initiative or at the request of the chiefs, in several disputes and brought about agreements which were reached, as he noted later, by restoring the position of the chiefs to what they were twenty years earlier; to 'put the Raja in his place, the Penghulu in his, the Lembaga and the chief families in a tribe of theirs.'⁸⁷ Referring especially to Sri Menanti, he wrote that order was established only by bring^{ing} the 'constitution to bear' and insisting the chiefs 'adhere strickly to it' adding that

very stringent measures were taken in order to restore peace and order and to guarantee the proper power of each Chief of the State. A false Penghulu was deported, and a number of false Chiefs detained until they would acknowledge the Chief of Tribe, recognised by the Raja and the Penghulu. 88

Clearly, he believed the authority of the 'ancient constitution' was the framework of his settlements. But, as Lister's comments upon these proceedings suggest, many petty quarrels turned upon the division of revenue among the suku and waris clans. The growth of tapioca plantations in Tampin, Rembau, Gemencheh and Johol and tin-mining in Sri Menanti had considerably enhanced the wealth of many districts. The right of the waris chief and lembaga to a share in revenue derived from these ventures was at the root of many of the

87. M. Lister, 'Malay law in Negri Sembilan', JSBRAS, No. 22, (1890), p. 307.

88. Ibid., pp. 307-8.

disputes. Thus, in settling the validity of titles of chiefs or their powers, he found it necessary to introduce a financial settlement. This he based as far as possible upon adat, modified to facilitate easier administration. To settle disputes between waris clans and private individuals who had opened mines in Sri Menanti, laws were enacted whereby the waris received five per cent, of tin revenues collected and the mine developer, regardless of his status, \$1.50 per bhara of tin mined.⁸⁹ This arrangement was also extended to Johol, Gemencheh and Inas where the Dato' Penghulu and waris were allowed fifteen per cent of revenue derived from waste lands as well as fixed allowances based on income won from the revenue farms. The lemebagas - the chiefs of the suku clans - in all these States were to receive twenty per cent of an annual rent of one dollar levied on land holdings within their suku as well as a fixed allowance which, in contrast to the waris, was not to be subject to any fluctuation.⁹⁰ The Yam Tuan was given a fixed allowance of \$1800 which was doubled in 1888.⁹¹

Rembau and Tampin were not included in these arrangements. However, in Rembau, as in Johol, the activities of the tapioca planters gave Lister an opportunity to intervene and impose a

89. Negri Sembilan AR, 1887, p. 4; C. 5566, p. 129.

90. Ibid.

91. Ibid. p. 128.

settlement. In September 1887, along with the Governor, he negotiated a treaty which made it possible for him to 'assist' in the country's affairs and to take control of the expenditure of its revenue, exclusive of that derived from waste lands. The Rembau chiefs, however, were reluctant to relinquish their control and only by agreeing to give them one-third of the annual revenue was Lister able to secure the agreement. The division of this third among the chiefs was, according to the treaty, to be decided by the Dato' Penghulu in Council, but was in fact allocated by Lister. The lembagas received a third of land rents collected from suku land and fixed allowances derived from the rent of the opium farm. The Dato' Penghulu and waris were given a third of income gained from land alienated to planters and from customs and forest licenses and as well the Dato' and waris chiefs received allowances based on the opium revenue.⁹² At the same time, the Tampin ruler who experienced similar difficulties over the distribution of the country's revenue, agreed to accept a British officer to administer his State. A Collector and Magistrate was appointed in October 1887 and made responsible to Lister. He took charge of the affairs of Tampin (and also Rembau and Gemencheh) while the chiefs received fixed

92. Ibid.

allowances determined by the Collector.⁹³

Thus, by preserving the status and authority of the Penghulus, waris chiefs, and lembagas and insuring their incomes, Lister was able to extend his control throughout these States. By insisting upon a strict adherence to what he discerned as the constitution of each State, he was able to maintain order. In contrast to Sungai Ujong or Selangor where the Resident's administration deprived the Malay political institutions of their administrative functions, in these States Lister governed through these existing institutions. Hence, whereas initially Weld and Lister employed the 'ancient constitution' as a device for preserving order, latterly they found it a useful, indeed, essential framework for governing the country, As Lister observed in 1891;

As soon as the masses saw that each Chief was being fully supported in accordance with their own institutions, it was difficult for them to find fault either with the administration of the Chiefs or that of the Government supporting them. Had it been otherwise, the Government would have had to deal with the masses, instead of the Chiefs, which, unless forced upon it, would have been deplorable. 94

By the beginning of 1888, therefore, Lister, as 'Superintendent', could be said to have established a supra-State administration

93. 'Report on the Negri Sembilan' 4 Oct. 1887 enclosed in Weld to Sec. State, 17 Oct. 1887, C. 5566, p. 56.

94. Negri Sembilan AR, 1891, p. 3.

incorporating the Sri Menanti confederation and Rembau and Tampin.⁹⁵ It was, however, an administration without any legal foundation. In matters of legislation for instance it was necessary for laws to be enacted separately by each State.⁹⁶ In 1889, however, Lister was able to persuade the rulers to combine in a larger 'Confederation' under the old name of 'Negri Sembilan' and thereby enabling him to lay the formal foundation for his administration. The treaty which established the Confederation provided for British protection and the appointment of a British Resident to give 'assistance' in its administration.⁹⁷ A State Council was then established which, as in Perak and Selangor, had no precedent in ^{the} country's history and bore no resemblance to the existing councils of chiefs. Its members included, in addition to the Resident, the ruler of Tampin, the Dato' Penghulus of Johol and Rembau and the Yam Tuan of Sri Menanti.⁹⁸ It met only on ten occasions during the next six years, but served

95. In response to the Yam Tuan's request for a British Resident, Weld raised the status of Collector's post to that of 'Superintendent' in October 1887. (Weld to Sec. State, 11 Oct, 1887, CO 273/148; Negri Sembilan AR, 1887, C. 5566, p. 128.)

96. Negri Sembilan AR, 1887, C. 5566, p. 130.

97. See Chapter I, pp. ~~346~~.

98. Smith to Sec. State, 18 June 1889, CO 273/100. Tengku Muda Chik, son of Yam Tuan Radin became a member shortly after the Council was established. ('Notes on the History of the Constitution and organisation of the State Council of Negri Sembilan, 1931,' Clementi Papers.)

to simplify the legislative procedure and to enable the Resident to legalise his authority as executive head of the Confederation.

It is doubtful, however, that the Council's decisions were legally valid. In order to overcome the fear of the Dato' Penghulu of Rembau that the Yam Tuan of Sri Menanti might use the Confederation to establish his control of Rembau, Lister introduced a clause into the treaty which declared that its provisions did 'not imply that any one Ruler should exercise any other power or authority in respect of any State than that which he now possesses.'⁹⁹ It would appear, therefore, that this clause could prohibit one ruler enacting legislation for another State. This anomaly was not altered by the 1895 treaty, which widened the confederation to include Sungai Ujong and Jelebu, as it contained the same provision.¹⁰⁰ Indeed, as the Dato' Penghulu of Jelebu joined only after considerable pressure had been brought to bear, the inclusion of these two States only heightened the tension between the Undangs of Rembau, Sungai Ujong and Jelebu and the Yam Tuan.¹⁰¹ It is not clear whether the conflict between the provisions of the treaty and the legislative process was ever questioned, but E.W. Birch, who succeeded Lister, came close to

99. Maxwell and Gibson, Treaties, p. 63, article 3.

100. Ibid., p. 64-5. See also Chapter V, pp. 36-7

101. Jelebu Monthly Report, Mar. 1897, in NSGG, 30 Apr. 1897, p. 112.

solving it in 1898 when he attempts^{ed} to settle the difference between the Undangs and the Yam Tuan. Whether his motives went beyond this issue is not clear from the existing evidence, but he did remark that the government could not function properly until the relationship between the constituent States had been settled.¹⁰²

He brought matters to a head in 1897 by persuading the Yam Tuan to invite the Undangs to witness the ceremony of obeisance at Hari Raya and to the celebrations of Hari Raya Haji. Only the Dato' Penghulu of Johol accepted, the others preferred to decline lest they might compromise their independence by attending.¹⁰³ A settlement was eventually reached whereby the ruler of Sri Menanti became the 'Yang di per Tuan' and recognized as 'Raja' of Negri Sembilan in accordance with the terms of the settlement ~~was~~ set out, the Yang-di-per Tuan acknowledged the independence of the Undangs and declared he would not 'interfere in the Customs of the Country or in Muhammadan Law.' Further, he agreed that 'every matter that arises in each State' was to be 'settled in consultation with the British Resident...and is not to be subject to Our Commands.' Finally, the election of a successor to the title of Yang-di-per Tuan was to be decided by the four Undangs 'in accordance with the Customs

102. E.W. Birch, 'Election and installation of Tuanku Muhammed as Yang di pertuan Besar', JSBRAS, No. 46, (1906), p. 12.

103. Ibid.; 'Reminiscences', E.W. Birch Papers.

and Constitution.'¹⁰⁴

By this agreement, therefore, Negri Sembilan gained a single head of State; but what were the Yang-di-per Tuan's powers? The 'old Constitution' was never formally defined. The Yang-di-per Tuan was prohibited from interfering in certain matters set out in this Agreement, but his position in the government of the country was not made clear. Questions which affected 'Muhammadan Law' might be discernable, but it was less clear what was meant by 'Custom'. Adat could embrace the whole of Malay life; to the British administrator, however, it generally referred to the powers and jurisdiction of the raja, Undang, waris chief and lembaga, one to another and each to their clan. Hence, when the Yang-di-per Tuan attempted to interfere in the election of a Dato' Penghulu in Rembau and an Ulu Muar chief, the Governor intervened to prevent him.¹⁰⁵ However, the question was never raised whether the Yang-di-per Tuan could enact legislation for the whole of Negri Sembilan. As President of the State Council he participated in the legislative process; his signature was usually attached to the enactments. State proclamations, were made in his name and under his seal alone. Unfortunately the courts were never asked to consider

104. Maxwell and Gibson, Treaties, pp. 65-6.

105. Anderson to Sec. State, 2 Sept. 1909, CO 273/351.

this point. Despite the provision of the 'ancient constitution' and the 1898 Agreement, the Yang-di-per Tuan de jure came to exercise powers well in excess of those his ancestors were supposed to have held.

Finally, the position of the Resident must be observed. The 1895 treaty which brought about the larger Confederation set out the Resident's role in the administration more clearly than in the 1889 agreement; the chiefs were 'to follow his advice other than those touching the Mohammadan religion.'¹⁰⁶ Yet, unlike the model for such agreements, the Pangkor Engagement, this passage did not prevent the Resident from offering 'advice' in questions affecting 'custom'. This may be explained by the fact that in Negri Sembilan the Resident had become the final arbiter of custom and as well its enforcement officer. Hence, in the 1898 Agreement re-establishing the Yang-di-per Tuan, the Resident was cited in article one with the Yang-di-per Tuan and the four as having 'bound together the Constitution and Customs of the Country and the heritage of our ancestors of old time.'

v

Hugh Clifford's tour as Agent to Pahang ended in September 1888

106. Article 2, Maxwell and Gibson, Treaties, p. 64.

with the appointment of J.P. Rodger as the first British Resident.¹⁰⁷ Rodger came to Pahang from Selangor where since 1882 he had served with Swettenham, often acting for him as Resident. He was regarded as a very able administrator, but had had little experience with the political problems of establishing Resident rule in the Malay States. What he brought with him to Pahang, therefore, was a considerable administrative experience and thorough knowledge of the 'Residential System' as it had been developed in Selangor.

Conditions in Pahang in 1888, however, differed somewhat from those which prevailed in Perak and Selangor in the 1870's. For one thing, although it was generally believed that Pahang possessed great mineral wealth, there was no flourishing mining industry as there had been in Larut and Ulu Klang. Some gold and tin was mined in Ulu Pahang, but not in sufficient quantities to support a large and expensive administration. For another^{thing}, unlike the rulers of the west coast States in the 1870's, the authority of Sultan Ahmad

107. John Pickersgill Rodger was born in 1851, educated at Eton and Oxford and called to the Bar in 1877. After working for a time in the East End of London, he became Chief Magistrate and Commissioner of Lands, Selangor, in 1882. Following his period in Pahang, he became Resident to Selangor in 1895 and finally Governor of the Gold Coast in 1905 where he died five years later. (Rodger to Sec. State, 18 July, 1888, CO 273/157; CO Lists. 1895; Who Was Who, 1897-1916.)

was relatively effective throughout the country.¹⁰⁸ Moreover, the Sultan of Pahang resented the conditions imposed upon him in 1888. Indeed, he made his discontent known by withdrawing to Pulau Tawar which was situated in the interior about a hundred and twenty miles from Pekan, his capital and the Resident's headquarters.¹⁰⁹

These problems did not escape the attention of the Governor, Clementi Smith, who warned Rodger to exercise 'great caution' and to be in 'no hurry to introduce reforms, to put a stop to abuses, or to collect revenue.' A policy of conciliation was to^{be} initiated before any important reforms were attempted and the eventual reforms had to reflect this policy especially in respect of allowances to district chiefs.¹¹⁰ Thus, although Rodger arrived in Pahang in October 1888, he effected no administrative reforms until the following July, when for the first time he began to collect the revenue. Up to that date he limited himself to ascertaining the potential sources of revenue, the extent of the concessions granted

108. See Clifford's comments on the various Pahang chiefs in his memo. 1 Oct. 1888 enclosed in Smith to Sec. State, 15 Oct. 1888, CO 273/155.

109. Smith to Sec. State, 10 June 1889, CO 273/160.

110. Governor's instructions, 1 Oct. 1888, enclosed in Smith to Sec. State, 15 Oct. 1888, CO 273/155.

by the Sultan before British intervention and the number of chiefs who could receive an allowance in return for relinquishing their rights to collect taxes. Only one change was inaugurated immediately. At Pekan a magistrate's court was established under the Straits Settlements officer. A 'Supreme Court' was also formed whose members consisted of the Tengku Mahmud, the Sultan's eldest son, the Dato' Bendahara, the Dato' Temenggong and the Resident. It was to hear more important civil and criminal cases especially those of murder.¹¹¹

In July 1889 the Resident assumed direct control of the administration. 'Collectorates', under European officers, were established in five districts, Pekan, Kuala Pahang, Kuantan, Rompin, Temerloh and Ulu Pahang. With the exception of the 'Superintendent' of Ulu Pahang, these officers as in the west coast States were called 'Collectors and Magistrates' and endowed with executive and judicial powers. Under Captain Syers, who was seconded from Selangor, a police force of Malays and Sikhs was formed and three officers were appointed as Supervisor of Public Works, Inspector of Mines, and Residency Surgeon.¹¹² A month later a State Council was

111. Rodger to Col.Sec. 13 Oct. 1888, enclosed in Smith to Sec State, 15 Oct. 1888, CO 273/155; Pahang AR, 1888, C. 5884, p. 93.

112. Syers remained for only two months. The force consisted of 150 Malays and 50 Sikhs. (Pahang AR, 1888, C. 5884, 93, and Pahang AR, 1889, C. 6222, p. 79.)

created consisting of the Sultan, his son Tengku Mahmud, his brother Engku Muda Mansur, the Resident and nine principal chiefs.¹¹³ Immediately, therefore, the Resident established his administration, conceived and organised along lines developed in Perak and Selangor.

It was Rodger's intention to work as closely as possible with the Sultan and his chiefs. Indeed, orders were issued to Collectors to seek the co-operation of local chiefs and headmen in administering their districts and in Ulu Pahang the Sultan's younger brother was made a special assistant to the Superintendent.¹¹⁴ Before any attempt was made to take over the collection of revenue a civil list was compiled whereby the district chiefs formerly entitled to collect taxes were given allowances based on a figure somewhat in excess of the sum generally thought to represent the Chief's annual income.¹¹⁵ The Sultan's allowances was fixed at ~~£~~18,000 per annum, equal to that received by the rulers of Perak and Selangor, and in addition

113. The nine chiefs were the Dato' Bendhara, the Dato' Temenggong, the Dato' Shahbandar, the Maharaja Perba of Jelai, the Orang Kaya of Chenor, the Orang Kaya of Temerloh, the Imam Prang Indera Gajah, the Imam Prang Indra Mahkota and Ungku Andak. ('Past Organisation and Present Constitution of Pahang State Council,' 1934, Clementi Papers.)

114. Pahang AR, 1889, C. 6222, p. 77.

115. Linehan quotes a Pahang version which claims that the Penghulu of Balai, Che Abu Bakar was entrusted with compiling the list. He is said to have included friends and excluded those who should have received allowances. Although both the Regent and the Sultan intended to amend the list, it was finally passed as submitted. (Linehan, 'A History of Pahang', JMBRAS, Vol.XIV, Pt. II, (1936), pp. 129-30.)

to a special annual indemnity of ~~£~~7,920 from Selangor for Pahang's assistance in the Selangor civil war and ~~£~~3,600 from concessionaires; in all a total of ~~£~~29,520. The civil list for the year 1889 was estimated at ~~£~~48,580, but which actually amounted to ~~£~~24,790 for the second half of the year.¹¹⁶ Nevertheless, although this sum amounted to nearly eighty per cent of the revenue for the year, the Sultan and the district chiefs were not satisfied with their allowances.

In an attempt to circumvent the Sultan's hostility to the new order, Rodger successfully persuaded the ruler to delegate his authority to his son, Tengku Mahmud. In return the Sultan's allowances were doubled. In a titah he authorised Mahmud to act 'in consultation with British Resident to enact laws and issue regulations with reference to all matters concerning the administration of the Government.'¹¹⁷ Henceforth, the 'Regent' as he was called, was closely associated with the Resident in the government of Pahang. It was a useful arrangement which gave the appearance that the Sultan's representative supported the Resident's administration.

116. Smith to Sec. State, 10 June 1889, CO 273/160.

117. Linehan quotes a translation of the titah. (Linehan, JMBRAS, Vol.XIV, Pt. II, p. 127.)

Although many of the reforms which Rodger introduced were cautious and limited, their long term effect was designed to reduce the powers of the district chiefs considerably. For instance at the first meeting of the State Council, presided over by the Sultan, two Orders in Council were passed, one which while recognising the principle of kerah labour, limited the demands a chief could make of a ra'ayat to one month at a time and not more than two months in a year and made payment in money or in kind necessary for such service.¹¹⁸ The other recognised the institution of slavery, but made provisions for registering all slaves and debt-slaves and prohibited the creation of new ones.¹¹⁹ At the second meeting, a fortnight later, another Order was enacted which set out regulations defining the powers of the chiefs and headmen. It was drafted in the form of a kuasa and was closely modelled upon the nenghulus' kuasa issued in Perak and Selangor.¹²⁰

Although these regulations limited the power of the chief in his district and therefore must have been resented, their discontent crystalised on the question of their allowances. At the second

118. Order in Council, V of 1889; Pahang AR, 1889, C. 6222, p. 78.

119. Order in Council, IV of 1889; Pahang AR, 1889, C. 6222, p. 78.

120. Order in Council, 1 of 1890; Pahang AR, 1889, C. 6222, p. 85.

meeting of the State Council they demanded that their allowances be increased and that their headmen should also receive some income from the government. Rodger at first resisted this request, but eventually agreed to raise only the chiefs allowances on the condition that these would be used to pay the penghulus.¹²¹ After some deliberation they rejected this proposal and demanded still larger sums and threatened to disobey the Council's enactments unless their wishes were met. Arguing that the country's revenue was insufficient for further increases, Rodger rejected their demand and warned them that the laws must be obeyed otherwise the offenders would be punished.¹²²

For the moment Rodger was able to still the opposition, but his insistence on upholding the decisions of Council was a good example of how he sought to introduce controversial measures through the Council, thereby associating the ruler, the Regent and as many ^{of the} chiefs as possible with his proposals. Owing to the size of Pahang the Council seldom met more than twice a year, but all important administrative matters were submitted to it. Thus, among other questions the demarcation of the chiefs territories and the

121. Linehan, JMBRAS, Vol. XIV, Pt. II, 1936, pp. 131-2.

122. Ibid., p. 134.

succession of Raja Mahmud to the position of Tengku Besar or heir apparent were brought before Council.

The principal problem, however, remained the subordination of the district chiefs to the authority of the Collector and Magistrate. The bulk of the regulations brought into force during 1889 and 1891 sharply reduced their powers in law. They could no longer raise taxes, they had been partially deprived the right of employing the manpower of their districts and they had their powers and duties strictly defined by an Order in Council.¹²³ The Collector's task, therefore, was to try and enforce these regulations and to make the district chief and his headmen useful assistants in the general administration. The chiefs discontent gave rise to rumours in 1889 and 1890 that they were plotting to drive the Resident out of Pahang.¹²⁴ In December the Orang Kaya of Semantan, 'Abdu'l-Rahman, or Bahman as he was usually called, threatened to prevent the Collector and Magistrate of Temerloh from establishing a police station in his district at Lubok Trua. Although Bahman was only a chief of the second rank, he was the most important chief in the Temerloh district. He had supported the Sultan in his bid for power and during the Selangor civil war fought on Tengku Zia'u'd-din's

123. Ibid., pp. 137-8; Pahang AR, 1891, C. 6858, p. 98.

124. See Pahang, AR, 1890, C. 5676, p. 92.

side. But, ^{for} this threat and another letter he had written to the Resident of Selangor in which he proposed attaching his district to Selangor, he was made to account for his actions before the Resident and Sultan. He denied he had sent any letters, but shortly afterwards, against the Sultan's orders, returned to Semantan. In February the following year the Maharaja Perba of Jelai failed to capture him as he had fled to Kelantan. When Bahman returned later in the year, the Collector found he still refused to obey his orders. In October, therefore, the Sultan signed an order depriving Bahman of his position and ordering his arrest.¹²⁵

Once again the Semantan chief eluded his captors and instead launched a counter-attack. It is unnecessary, however, to go into the details of these events here, except to note that Bahman succeeded in the next two years in harassing Pahang from the shelter of Kelantan and Trengganu. Furthermore, it must be observed ^{f/} ~~that he~~ ^{Pahang} apparently received wide spread sympathy from the people ^{of} ~~of~~ ^{of} Pahang and the support of a number of the chiefs notably that of To' Gajah, one of the Sultan's closest associates and his host at Pulau Tawar, who joined Bahman.¹²⁶ The position of the Sultan appeared to some

125. See Chapter XII of Linehan, JMBRAS, Vol. XIV, Pt. II, for an account of these proceedings.

126. Pahang AR, 1892, C. 7228, p. 93.

officials as rather ambivalent; he appeared, on the surface at least, to support the Resident, but, although it was never proved, it was thought that he secretly gave help to his old supporters.¹²⁷

Be this as it may, the rebellion and its suppression enabled the Resident and the Collectors and Magistrates to establish their authority for once and all time. Chiefs who appeared to have collaborated with the rebels were replaced and the ra'ayat left in no doubt as to the real authority in their districts.¹²⁸ The Sultan was compelled to live at Pekan and Pulau Tawar was destroyed.¹²⁹ Isolated and without the support of his once powerful chiefs Sultan Ahmad had no choice but to acquiesce finally to the new order. He rightly complained that his authority was now destroyed, a complaint which prompted a Colonial Office official to observe that such was the 'almost inevitable consequence of the Residential System.'¹³⁰

127. See Smith to Sec. State, 18 Aug. 1892, CO 273/182 and Swettenham's despatch recommending him for a K.C.M.G, in which he said that his complicity 'was not enquired into or proved'. (Swettenham to Sec. State, 6 Oct. 1902, CO 273/284.)

128. Pahang AR, 1892, C. 7228, p. 100.

129. Smith to Sec. State, 29 Aug. 1892, CO 273/182.

130. Fairfield minute, 30 Sept. 1892, in Ibid.

CHAPTER IV

THE GROWTH OF MODERN GOVERNMENT TO 1895.

i

When Hugh Low arrived in Perak, he was faced with a formidable task. He had to win over a largely hostile Malay population to the new order, preserve peace among the factious Chinese and relieve the country of a debt amounting to nearly \$800,000.¹ Above all, he had to introduce ordered government throughout the State. He inherited from Davidson an administration which consisted of three divisions called 'Collectorates', one under a Superintendent who was located at Durian Sabatang in Lower Perak, and another under the Assistant Resident in Larut.² The headquarters of the latter was located at Taiping, and in addition to having charge of the State secretariat, supervised the prison, hospital and public works department. The Perak Armed Police was also situated there.³ The Resident was in charge of the third district and resided at Kuala

1. Swettenham, British Malaya, p. 227.

2. See Jervois to Sec. State, 6 Mar. 1877, CO 273/90. Low reorganised his administration upon taking up his office. Speedy, as Assistant Resident, was sent to Lower Perak and Paul was appointed to Larut as Superintendent. The move successfully forced Speedy to resign in 1878 and these posts were reversed again with W.E. Maxwell becoming Assistant Resident. (SSGG, No. 56, 29 Mar. 1878, p. 418; Sadka, JMBRAS, Vol.XXVII, Pt. 4, p. 33, fn. 7 and 15; Gullick, JMBRAS, Vol.XXVI, Pt. 3, p. 83.)

3. This para-military force had its origin in the force raised by Speedy when he served the Mantri. After the Perak War it was enlarged and reorganised under Captain Swinburn and Lt. R.S.F. Walker. Its total strength of 490 men in 1879 was raised to 576 in 1882 when Walker became Commissioner. In 1884 its name was altered to the '1st Battalion Perak Sikhs.' (Perak Handbook and Civil Service List, 1893, pp. 7-9.)

Kangsar. One more Collectorate, Krain, a region of extensive padi cultivation, was added in 1878. Although Assistant Collectors were appointed to Upper Perak, Batang Padang and Selama, no other Collectorate was established until 1886 when Kinta became one following the discovery of tin there.⁴

The 'Collector and Magistrate', as the officer in charge of each district was called, was appointed by the ruler upon the Resident's advice and with the approval of the Governor. He was responsible to the Resident and possessed both executive and judicial powers, as the district officers in the Straits Settlements had held when the Colony was under the Indian Government.⁵ The single officer endowed with such powers was in a flexible position to deal quickly with all matters arising in his district without reference to other departments of the Resident. Low, especially, aware that complex distant collectorates often demanded effective action at the local level, gave his Collectors and Magistrates 'great liberty of action.'⁶ The Collector was responsible for all matters in his district. In these early years he was the land officer, supervisor of public

4. Perak AR, 1886, C. 5566, p. 26.

5. For an account of the Indian and crown colony systems see W.E. Maxwell's minute 8 July 1882, enclosed in Weld to Sec. State, 28 May 1883, CO 273/120.)

6. Perak AR, 1886, C. 5566, p. 32.

works, the inspector of mines in the mining districts and harbour master in the coastal Collectorates; he was also the sub-treasurer charged with the collection of the revenue of his district and the supervision of operation of the revenue farms.⁷ Although the local battalion commander was responsible to the Commissioner of the Perak Sikhs, the Collector decided how they were to be deployed. Until 1890 the judicial powers of these officers was described in executive orders as 'roughly, to be equal in extent to that given by the law in the Straits Colony to the Magistrates.'⁸ Procedure was according to the practice in English Courts of Petty Sessions and, similarly, the law of evidence was to follow English principles. In criminal cases they were to be guided by the Straits Penal Code.⁹

Low was strongly opposed to highly centralised government particularly of the kind found in crown colonies. He was inclined to agree with Maxwell's view that such a system was 'narrow and

7. Low to Col. Sec., 9 Aug. 1882, enclosed in Weld to Sec. State, 28 May 1883, CO 273/120; see also Swettenham's description in British Malaya, pp. 242-3.

8. W.E. Maxwell memo., 'Instructions to Officers Instructed with Magisterial Duties,' 7 Sept. 1882, published in PGG, No. 112, 12 Oct. 1888, pp. 79-82.

9. The Indian Penal Code which existed at the time of the transfer of the Straits Settlements from the Indian Office to the Colonial Officer in 1867, was repealed under Ord. XI of 1871. It was again in 1872, 1883 and 1891, the latter being formally adopted in Perak Order in Council XII of 1895.

inelastic' and, therefore, unsuited to the requirements of Perak.¹⁰ Instead, he preferred to limit the growth of central departments and devolve the functions of government on a single officer at the district level, such as the Collector and Magistrate; government he believed, should be essentially personal. Implicit in his notion of colonial rule was the view that authority should be exercised where possible through existing institutions, tempered by 'English honesty and justice.'¹¹ Certainly he was well qualified to appreciate the merits of both systems as he had served for years in a crown colony and for a time with James Brooke in Sarawak. It is not clear, however, to what level he would have tolerated these institutions. He evidently admired the Dutch administration of Java and the position occupied by the 'controleur'; but during his Residency in Perak the only Malay institution which remained effective was that of the penghulu.¹²

The reasons why Low failed to utilize other Malay institutions more fully in governing Perak - assuming of course that he wished

10. Minute by W.E. Maxwell, 8 July 1882, enclosed in Weld to Sec. State, 28 May 1883, CO 273/120.

11. Low to Robinson, 28 May 1878, enclosed in Robinson to Sec. State, 13 June, 1878, CO 273/94.

12. Low to Col. Sec., 9 Aug. 1882, enclosed in Weld to Sec. State 28 May 1883, CO 273/120; Perak AR, 1882, C. 4192, p. 26.

to - have already been suggested. After the assassination of Birch, the chiefs could not be relied upon, but the important factor was that Malay institutions were inadequate to deal with the problems raised by the mining industry in Larut. Low suggested the difficulty when he described the establishment that a Resident initially needed in a Malay State: 'A small staff of carefully selected officers supported by an efficient Police, are all that is required until Chinese miners become numerous and troublesome.'¹³ The mining industry raise special problems which required a more complex administrative machine than the personal rule of a single Malay chief or a solitary British officer. Law and order had been restored in Larut only by British intervention, but it could not be sustained simply by police surveillance. While a police force might prevent open quarrels between the secret societies, matters of dispute turned upon the control of water supplies and land, as well as the related problems of transport, labour and revenue farms. If order was to be preserved, and the industry expanded, it was necessary for the Resident to exercise a control over such matters. Thus, two different kinds of administration grew up to meet the needs of the Malays living dispersed over a wide area of Perak and the Chinese concentrated in the mining districts and residing in large villages or small towns.

13. Low memo. 6 July 1889, CO 273/164.

In those areas inhabited by Malays, the penghulu scheme, which Low inaugurated in February 1878, became the principal means of administration. Prior to British intervention, the smallest administrative unit in Perak was the mukim, or parish. Usually impermanent and always small the villages within the mukim were generally composed of persons not only of common cultural background, but also of related kinship groups. From among these a penghulu was selected by the local district chief and appointed to his office under the Sultan's surat kuasa which required of him to preserve the peace and apprehend criminals and provide labour for the district chief. He was not an autocratic ruler, however, and should be seen as 'merely the most senior of a group of village leaders.'¹⁴ As such, his coercive power was slight, resting as it did upon his force of character, position and prestige. For instance, in his capacity of principal judicial authority in the kampong, his role was more conciliatory than compulsive.¹⁵ His remuneration was by receipt of a percentage of exports, fines and special taxes.¹⁶

14. Gullick, Indigenous Political Systems, p. 36.

15. Ibid., pp. 115-6. As Gullick remarks, the penghulu had to 'conciliate and to carry the leading men of the village with him. Equally, the individual villager had to submit to what his fellows recognised as a fair judgement or quit the village.'

16. Swettenham memo. 8 Oct. 1876, enclosed in Weld to Sec. State, 28 May 1883, CO 273/120. Birch Report, enclosed in Clarke to Sec. State, 26 Apr. 1875, CO 809/5.

As already observed, after the disturbances of 1875-6, the important problem in these districts was to maintain order. The suggestion that a police force could perform this function and also collect revenue gave way to the less expensive proposal to employ the penghulus in this task.¹⁷ Thus in February 1878 some forty-five penghulus were appointed to areas along the Perak and Kinta rivers and along the coast, north to Larut and south to Bernam.¹⁸ Candidates were selected in various ways: though their claim to heredity, by means of an election in the mukim, by petition from the villagers, or by commendation of the district officer or Resident. Nominations were then considered in Council and the successful candidates were appointed under a surat kuasa.¹⁹

In keeping with his role as a peace keeper, the penghulu's surat kuasa required him to report all serious crimes and to assist the police in capturing criminals.²⁰ He was also empowered to hear

17. See correspondence in Robinson to Sec. State, 27 Apr. 1878, CO 273/95.

18. Low memo., 6 Aug. 1878, Ibid.; PSC, 6 Sept. 1878, PMS I.

19. Low to Col. Sec., 9 Aug. 1882, enclosed in Weld to Sec. State, 28 May 1883, CO 273/120; PSC, 4 Feb. 1878, PMS I; PSC, 9 Dec. 1892, in FGG, No. 115, 30 Mar. 1892, p. 179. Before Low approved the appointment of a penghulu he met the candidate. (Sadka, JMBRAS, Vol. XXVII, Pt. 4, p. 33.)

20. No copy of the Perak surat kuasa has survived, but most of the articles of the early ones appeared in the Selangor surat kuasa of 1883. (SSLC, Paper No. 23 of 1883, p. 260.)

petty cases and impose fines up to five dollars and to decide civil disputes in which the sum involved did not exceed ten dollars in value. He was also expected to take part in the general administration of his mukim, and required to keep open all paths, bridle paths and roads and to register all new mines and land opened within his mukim. His emoluments, as already mentioned, were linked to the collection of revenue in his district. As in many of the areas inhabited by Malays, there was little substantial agriculture or tin mining, the penghulus appointed to these mukims were given a small salary and ten per cent of all revenue (chabut) collected in the mukim.²¹ They did not directly collect all the revenue themselves, but assisted in its collection. For instance, in the case of tin, from which the State derived most of its revenue, the penghulu participated in the collection of export duty by signing the miner's export voucher. In this way an additional check was kept on the tin exported from Perak and the Collector and Magistrate was able to calculate the amount of chabut the penghulu should receive. The penghulu, however, received no chabut on tin from his own mines, for, like all Malay mine owners, he was entitled to a royalty (asil

21. See Low's comments in his letter to Col. Sec., 8 July 1878, enclosed in Robinson to Sec. State, 27 Aug. 1878, CO 273/95.

tanah) of two dollars a bhara of tin.²² In other districts, especially in Krain, where there was intense cultivation of padi, the penghulus received no salary, but derived their income from twenty per cent of the mukim revenue.²³

It was clearly Low's intention to associate the penghulu with the government of the country. He permitted the penghulu to receive chabut because he believed that they should 'share liberally in the prosperity of the country' and that as a result they would find it to 'their advantage to assist in its advancement.'²⁴ In the years that followed, Low gave the penghulus further responsibilities. They were called upon to enforce regulations pertaining to their districts such as enforcing rules on the planting of coconut trees and the date by which the peasant was expected to plant his padi.²⁵ They became the registrars of births and deaths in their mukims, issued licenses for boats and the right to use weapons, and assisted in the collection of duties

22. Order in Council, 6 Sept. 1878, quoted in PSC, 6 Sept. 1878, FMS, p. 19.

23. Ibid.

24. Perak AR, 1881, C. 3428, p. 12; Memo. on Perak AR, 1893 in Mitchell to Sec. State, 23 May 1895, CO 273/204.

25. Order in Council, 1 of 1880 and PSC, 30 Dec. 1880, FMS I.

on such jungle products as gutta percha.²⁶

It is difficult to discover to what extent the penghulus carried out these responsibilities. One can imagine that in distant mukims, where communications were poor, they largely ignored their duties. It might also be wondered how effective was the authority of the penghulu in these circumstances. Before the appointment of the Resident his authority was limited by the willingness of the ra'ayat to comply with his orders and by the support he could expect to receive from his district chief. The Collector and Magistrate should have filled the vacancy left by the removal of the district chief, but there were few officers and their districts were large. They had little time to supervise their work. One example suggests the situation in the early 1880's. When in 1880 a regulation was issued requiring the ra'ayat to plant their padi at a certain date it was generally ignored with the usual unfortunate results. The Chief Kadzi accounted for this breakdown of authority by explaining to the State Council that 'the Penghulus do not obey the Government and the people do not obey the Penghulus,' adding that they would never do so 'till the Government appoints someone to enforce its orders by fine and imprisonment.'²⁷ It was a problem which Low fully appreciated and

26. Order in Council, 10 of 1886, 1 of 1887, 3 of 1880 and 7 of 1888.

27. FSC, 30 Dec. 1880, FMS [p. 18.

in 1882 proposed the appointment of a special officer who would visit Malay kampongs and assist the penghulus in 'understanding the requirements of the Government and explain its policy.'²⁸ In this way, as he noted later, he hoped to persuade the penghulu that he had a responsibility to promote the prosperity of their people and that they were not appointed 'merely as the recipients of more or less involuntary gifts and for their own aggrandisement.'²⁹ However, he was unable to create this office until 1889 when a 'Superintendent of Penghulus' was appointed to Lower Perak.³⁰

While it was a necessary prerequisite to Resident rule that the Malay chiefs should be deprived of most of their former powers, it was not the Resident's intention to destroy the whole fabric of Malay society. Indeed, the Pangkor Engagement could be said to have proclaimed that Malay social institutions should remain unaffected by the appointment of a British Resident when it declared that Malay customs and religion were not to be subject to the

28. Perak AR, 1882, C. 4192, p. 26.

29. Perak AR, 1886, C. 5566, p. 35: For his comparison of the duties of this officer to the 'Controleur' in Java, see Low to Col. Sec., 9 Aug. 1882, enclosed in Weld to Sec. State, 28 May 1883, CO 273/120.

30. PGG, No. 212, 28 Dec. 1888, p. 185. Herbert Berkeley was the first Superintendent; his appointment became effective on 1 January 1889.

Resident's advice. Although this principle may have been much abused and ignored, many of the reforms, such as the abolition of debt-slavery, were designed to benefit Malay society at large. Moreover, the preservation of the sultanate tended to sustain the structure of society. Thus, the penghulu continued to exercise a judicial function in the mukim as he did before the appointment of a Resident. His powers in this capacity were set out in his surat kuasa; in general he decided cases according to his notion of adat or as was laid down by individual Orders in Council. There was also a 'High Court' which sat at Kuala Kangsar.³¹ This may have been created by Birch,³² but it continued to hear cases during Low's term of office. It was presided over by a 'Chief Justice,' Raja Idris, who was assisted by other Malays.³³ Its jurisdiction remains obscure, but Low described it as administering 'the law of the country,' which 'though unwritten, is very generally understood and appears to differ

31. References to it as the 'High Court', the 'Chief Court' and the 'Supreme Court' appear respectively in PSC, 6 Sept. 1878, FMS I; PSC, 16 May 1879, FMS I and Perak AR, 1882, C. 4192, p. 29.

32. Birch had expressed the hope of establishing such a court. See Birch Report, 1875, enclosed in Clarke to Sec. State, 26 Apr. 1875, CO 809/5 and Precis, p. 6.

33. Raja Idris appears to have retained this title even after his succession to the sultanate, but to have relinquished it when the courts were reorganised in 1890. (Perak AR, 1882, C. 4192, p. 29; Perak AR, 1887, C. 5566, p. 67; The Singapore and Straits Directory, 1889, p. 258.)

little from the Code of Laws formerly in force in great Malay Kingdoms.'³⁴ It appears, in fact, to have had original and appellate jurisdiction in all matters, civil, criminal or ecclesiastical, and its decisions governed by a mixture of Perak adat and Islamic law.³⁵ It is not clear whether Low sat in this court, but it is worth recording the Governor's remark that the law administered in this court was 'Malay justice, that is what we should call injustice,' and that the Resident 'under his instructions, having obstinate men to deal with, finds it very difficult to interfere.'³⁶

One other court recognised as an integral part of the judicial system was that held by the kadzi. Low appointed a 'Chief Kadzi' and two Assistant Kadzis in 1879 and one more Assistant in 1882.³⁷ These were 'paid officers of the State' and held their appointments

34. PSC, 6 Sept. 1878, PMS I.

35. Low to Col. Sec., 9 Aug. 1882, enclosed in Weld to Sec. State, 28 May 1883, CO 273/120.

36. Robinson memo to Sec. State, 29 Apr. 1879, CO 273/101.

37. The Chief Kadzi and one assistant were appointed simultaneously. (PSC, 4 Mar. and 4 May 1879, PMS I.) Other assistants were appointed in the same year for the Krain Collectorate (PSC, 20 Oct. 1879, Ibid.) and in 1882 one to Kinta (PSC, 26 Oct. 1882, PMS I.)

under a surat kuasa.³⁸ What the powers and position of the kadzi was in Perak before or after British intervention is not clear. In middle Eastern countries the kadzi was a state official who heard cases involving Islamic law.³⁹ In Perak, however, as in the other Malay States, the distinction between adat and Islamic law was not always clear. Indeed an 1885 Order in Council which enabled the Chief Kadzi to delegate his authority to two Kuala Kangsar penghulus, assumed that this authority should include the power to administer both kinds of laws.⁴⁰ However, in time the jurisdiction of the kadzi's court was limited in law to matters pertaining to family law especially marriage, divorce and alimony.

Administration in areas inhabited by Malays was, therefore, in the first instance essentially one of preserving order. The necessity to economise prevented Low from establishing elaborate administrative machinery to govern these districts, instead he persevered with existing institutions. No sustained effort was made to bring the Malay official over from his passive role to that of an active administrator of the central government promoting the

38. After 1880 the kadzis were no longer entitled to collect zakat or religious tithes collected during the fasting month thereby making them dependent upon the State for their incomes and for the funds with which to erect and maintain mosques and for the provision of religious instruction which were thought to be their responsibilities. (Order in Council, No. 2 of 1880.)

39. Encyclopedia Britannica, (1964), Vol.12, p. 713.

40. Order in Council, 18 Dec. 1885.

prosperity and welfare of his district.

In the mining districts, however, the administration was necessarily more immediate and effective. In Larut and, after 1884, in Kinta, it was necessary on the one hand to preserve order among the large numbers of Chinese miners, shopkeepers, and labourers who were divided by clan and secret society and on the other to assist and regulate an expanding mining industry. Sir Andrew Clarke had laid the foundations for ordered government when he persuaded the Chinese miners to enter into an agreement which led to a settlement of their differences especially over the control of the mines and the supply of water resources. To Larut he appointed an Assistant Resident who took direct charge of the administration of the district; the principal departments of government at Taiping were under his immediate control. It was an arrangement made necessary by the districts special problems; the demarcation of land titles, the improvement of communication, the enforcement of medical and sanitary regulations, the supervision of the operation of the revenue farms, and the collection of land and customs revenue required a more elaborate administrative machine than rural Perak. The Assistant Resident also presided over the most important court in Perak. Called the 'Residency Court' it was usually held at Taiping where most of the important and difficult cases arose.⁴¹ It therefore

41. Robinson memo. to Sec. State, 29 April 1879, CO 273/101.

possessed original jurisdiction in criminal and civil cases, all cases involving capital sentences and as well appeals from the decisions of district Magistrates and penghulus. Death sentences passed by this court required the ruler's confirmation - in practice the confirmation of the State Council.⁴²

The principal means of contact between the Resident's administration and the Chinese was through the clan headmen and more especially the heads of the two rival secret societies in Larut. The latter were made members of the State Council. Whenever proposals were raised which might effect the Chinese or the mining industry they were usually consulted. Often they sat as assessors in the Residency Court or with the district Magistrate to assist in hearing difficult cases involving Chinese custom. But it was just at this point that governing the Chinese proved most difficult for the British officers. Although the Resident was prepared to take cognizance of Chinese personal law, it was another matter to decide what it was. It was particularly difficult to determine the rules governing the relationship between miners and their workers and the conventions affecting commercial contracts. Language alone placed the Chinese beyond the pale of officialdom. Furthermore, the presences of a large alien community, which the Resident might contain, but over

42. See Maxwell's 'Instructions', PGG, No. 112, 12 Oct. 1888, p. 79.

which he had little effective control, held serious implications for the Resident's administration. 'Thirty thousand Chinese', Low observed in 1882, 'might be assembled in a few hours at Taiping, the chief seat of commerce and government in Larut.'⁴³

In attempt to improve his control of the Chinese community, and inspite of considerable Chinese opposition, a 'Chinese Department' was established in 1883. Captain C.A. Schultz was appointed 'Secretary for Chinese Affairs' with his headquarters at Taiping.⁴⁴ Assistants were appointed to Lower Perak in 1887, and in the following year to Kinta. In 1894, by which time Kinta had become the principal mining district in Perak, the Secretary established himself at Ipoh.⁴⁵ The creation of this department followed the precedent set by the Straits Settlements in 1877 and like the 'Protector of Chinese', the Secretary acquired wide executive and judicial powers over the Chinese in Perak. These were not laid down in any single law, but accumulated in individual enactments

43. Perak AR, 1882, C. 4192, p. 18. A crude estimate of the Chinese in Perak in 1879 put the figure at 20,373. (Perak AR, 1881, p. 21.) In the first official census, this number had grown to 94,345 or amounting to about 44.03 per cent of the total population of Perak. (Perak Census Report, 1891, p. 722, in PGG, No. 336, 31 July 1891, p. 721.)

44. Weld to Sec. State, 28 Dec. 1882, CO 273/117; Perak AR, 1884, p. 29.

45. Annual Report of the Secretary for Chinese Affairs, 1894, in PGG, No. 237, 24 May 1895, p. 211; Perak AR, 1887, C. 5566, p. 25 and Perak AR, 1888, C. 5884, pp. 34-5.

and executive orders and by 1888 included such matters as were listed in a Resident's 'Proclamation' which authorised the Assistant Secretary to 'register brothels and the inmates therein, Sin-Khek Contracts, Promissary Notes, Mining and Other Agreements, Friendly Societies, Mining kongsis and Shops, and to Issue Licenses for Purchasing or Smelting Tin Ores.'⁴⁶ In the early years especially, the Secretary devoted much of his time to settling disputes between Chinese. Although he came to hold authority comparable to a district Magistrate, he heard these cases in his capacity as arbitrator.⁴⁷ The Chinese found arbitration a more attractive way of settling disputes than having them heard before a Magistrate where procedure was more complicated and costs higher. Until the Resident's 'Notification' of 1884 which governed the powers of this court was amended in 1891, the litigants bound themselves to abide by the Secretary's decisions; after 1891, appeals were permitted to the Residency or Senior Magistrate's Courts.⁴⁸

The appointment of the Secretary for Chinese Affairs was symptomatic of another development. However much Low may have disliked the growth of bureaucratic centralised government and however much

46. Proclamation, 3 Sept. 1888, in PGG, No. 106, 12 Oct. 1888, pp. 74-5.

47. In his first year the Secretary gave decisions in over six hundred cases. (Perak AR, 1884, C. 4958, p. 29.)

48. Notification, No. 10, 27 Feb. 1884, referred to in Order in Council, 14 of 1891; Perak AR, 1886, C. 4958, p. 29.

he desired to exercise the strictest economy, the structure of government grew as it assumed greater responsibilities. Consequently, it became increasingly important to introduce a measure of organisation in the administrative machine. All matters such as the employment, suspension and dismissal of subordinate staff, the tendering of contracts for public works, the holding of audit and the defining of procedure in local treasuries, had to conform to some fixed system if the administration was to function effectively and efficiently. It was Swettenham who in 1884, while acting Resident to Perak, set out the general principles which were to guide the future organisation of government in the Malay States:

the practice in the Protected States should be assimilated to that in force in such Colonies as the Straits Settlements or Ceylon, and that the Colonial Regulations and those General Orders which are common to Crown Colonies should guide Government officers in the service of the Perak Government. 49

He recommended the appointment of some officer with experience in the Straits Settlements or some other colony to introduce this system.⁵⁰ Such an officer was eventually appointed in 1888 with the title of 'Secretary to Government' and with duties 'similar to

49. Swettenham to Act. Col. Sec., 20 Oct. 1884, enclosed in Smith to Sec. State, 3 Nov. 1884, CO 273/130.

50. Perak AR, 1884, C. 4958, p. 30.

those of the Colonial Secretary in Her Majesty's Crown Colony.⁵¹

He assumed the duties of the Assistant Resident whose post was abolished while the Resident's secretariat at Kuala Kangsar was removed to Taiping. The Assistant Resident's duties connected with Larut district were taken over by a Collector and Magistrate.⁵²

Low retired in April 1889. In the course of his twelve years as Resident he had consolidated the gains made during the Perak War and won the hostile Malays over to the new order. Despite the Secretary of State's ambiguous instructions and an enormous public debt, he left the country with the foundation of modern government, and transformed a debt of £800,000 into a credit of £1,500,000. As an administrator, however, Low made little in the way of a novel contribution. Many of his regulations were derivative of Straits and Indian legislation. The land code of 1885 was drafted by Swettenham and based on the Indian Act XVI of 1839; the penghulu scheme may well have been based on Swettenham's memorandum of 1876; the judicial system was devised by W.E. Maxwell and the State Council was Jervois' suggestion. His particular contribution was

51. PGG, No. 2, 31 Aug. 1888, p. 1; Perak AR, 1888, C. 5884, p. 49; Treacher to Under-Sec. State, 24 Mar. 1888, CO 273/156.

52. Kuala Kangsar District Report, 1888, PGG, No. 150, 3 May 1889, p. 353.

his ability to govern the Malays; Clifford described him as reimporting to Malaya 'the cult of dealing with the Malays, which had been transmitted to him from Stamford Raffles through the first Raja Brooks'.⁵³ His shortcoming was his omission to define clearly, and legally sanction the powers of government.

His successor, Swettenham, approached administration in the Malay States from a somewhat different point of view. Whereas Low was cautious and conservative and fearful of the vulnerability of Perak's economy based on a single commodity, Swettenham believed that the prosperity and well-being of the country lay in the government providing the facilities for extensive capitalist exploitation of its mineral resources and agricultural potential. As he wrote in 1894, prosperity was best achieved by

the liberal but prudently-directed expenditure of public funds, especially when they are invested in high-class roads, in railways, telegraphs, waterworks, and everything likely to encourage trade and private enterprise.

This was not unprofitable expenditure,

The money that is spent is only invested, and comes back in increased revenue, while the State gains in palpable benefits like roads, railways and other works, or in the increased efficiency of the administration. Both add to the revenue. 54

53. Lovat, op. cit., p. xiii.

54. Perak AR, 1894, p. 370 in EGG, No. 332, 19 July 1895. Swettenham had already established his reputation for this approach in Selangor, for as one Perak officer exclaimed, somewhat irreverently, 'now all the money old Low has been bottling up will begin to fly.' (Extract from a letter by Charles D. Bowen quoted in 'British Malaya as it was', Asiatic Review, Jan. 1950, p. 903.)

As in Selangor, where he was Resident from 1882-89, so too in Perak, his vigorous application of these principles resulted in the rapid opening-up of the country and the spread of administrative control throughout the State. But as the responsibilities of government increased, it was necessary that Swettenham should reform his administration to make it more efficient and better able to cope with its numerous tasks. Indeed, his reforms extended to local government, the administration of justice and the centralisation of authority in the Resident's office.

One of the first problems which Swettenham tackled was the penghulu system. Although Low's scheme of supporting the traditional authority of the mukim headmen was successful in preserving order, it failed to bring the penghulus into active participation in local administration. This was partly the result of poor supervision by the district officers and partly the method of selection which limited the choice of candidates to a single family.⁵⁵ It was also due to the system of remuneration by chabut. In the more prosperous mining districts for example penghulus received so much chabut that they were able to employ others to do their work and consequently took little interest in their mukims. As one Collector noted, they were too 'wrapped up in private speculations' to devote much time

55. Low to Col. Sec., 9 Aug. 1882, Weld to Sec. State, 28 May 1883, CO 273/120.

to their districts.⁵⁶ In Kinta ten persons in 1889 received in chabut ~~£~~41,264, two of whom received a sum greater than the Collector's annual salary.⁵⁷ And among the other penghulus who received little or nothing, it caused dissatisfaction and a lack of interest towards their mukims.⁵⁸

Swettenham in his first Annual Report admitted that the system required overhauling; in the State Council he explained that payment of chabut should cease, as it would be more just to give the penghulus salaries in proportion to their position and responsibilities.⁵⁹ Even before the committee reported, two new penghulus were created on the basis of a salary alone⁶¹ while a government circular issued shortly afterwards had the effect of amending existing laws by restricting the amount of chabut a penghulu might receive to a sum equal to the salary paid to their

56. Kinta AR, 1889, in PGG, No. 182, 4 Apr. 1890, p. 189.

57. Ibid.

58. PSC, 5 Aug. 1889, in PGG, No. 288, 30 Aug. 1889, p. 677.

59. Perak AR, 1889, in PGG, No. 413, 25 July 1890, p. 453; PSC, 5 Aug. 1889, in PGG, No. 288, 30 Aug. 1889, p. 677. Low made some small amendments to the amount of chabut a penghulu might receive, but at no time did he propose abolishing it. (See Order in Council, 20 of 1889.)

60. PSC, 21 Nov. 1889, in PGG, No. 404, 20 Dec. 1889, p. 858. The members included the Resident, the Sultan and the Raja Makhota.

61. PSC, 1 Oct. 1890, PGG, No. 577, 21 Nov. 1890, p. 733.

kranis (or clerk).⁶² The recommendations of the committee came into force in 1893.⁶³ They restricted all future appointments to be made on a salaried basis and abolished the payment of chabut. Not surprisingly these proposals met with vehement opposition of those whose successors (in all likelihood their sons or other close relatives) would be affected by them. However, no sooner had they been introduced than some twelve penghulus of Lower Perak volunteered to place themselves under the new system.⁶⁴ Later the same year, at Swettenham's insistence, Council laid down that existing office holders would be permitted to draw chabut not in excess of £240 per annum.⁶⁵

Having introduced these reforms, Swettenham exercised his authority in Council, and with the assistance of the district officers dismissed penghulus who failed to fulfil their duties properly or who abused the powers of their office. In cases where dismissal was thought to be too strong a punishment, he levied fines on those penghulus who did not carry out their responsibilities

62. 'Circular', in PGG, No. 450, 9 Oct. 1891, p. 962.

63. The report was tabled in March 1892. (PSC, 9 Dec. 1892, in PGG, No. 115, 30 Mar. 1892, p. 179.) The schedule of appointments announced at this time included fifty-one penghulus, twelve assistants and kranis and four batos.

64. PSC, 21 June 1892, in PGG, No. 305, 10 Aug. 1892, p. 701.

65. PSC, 3-4 July, 1893, in PGG, No. 404, 9 Aug. 1893, p. 651; PSC, 20 Dec. 1893, in PGG, No. 1, 5 Jan. 1894, p. 1; PSC, 4 June 1894, in PGG, No. 576, 14 Sept. 1894, p. 479.

properly.⁶⁶ Although these reforms must have taken effect gradually, they were decisive in making the penghulu a more effective official of the executive branch of the Resident's administration.⁶⁷

Swettenham simultaneously tackled the problems associated with the administration of the small towns which had grown up in the mining districts or about the administrative centres. Low had not made any special arrangements for the problems raised by towns, but left their administration to the Collectors and Magistrates, who were aided by the medical and public works departments.⁶⁸ As it became necessary to levy states or to make regulations for them, the State Council would enact the appropriate authority.⁶⁹ But in

66. PSC, 27 Nov. 1894, in PGG, 28 Dec. 1894, p. 689.

67. The effect of these reforms was well illustrated by Winstedt in 1909 when he compared the old and new school of penghulus. 'The old-fashioned Penghulu is delightful to meet, courteous, full of quaint sayings and fascinating superstitions; the new is less polished, at times too painfully punctilious, rather uninteresting. The old man was related to half his mukim, and if he did not carry the Governments' affairs on his head and his own under his arm at least he carried them in equipose: he owned much land and overlooked the natural lethargy of his relations and life-long associates. The new is often as not a stranger to his district, an official not a village patriarch, a subordinate not a landed proprietor. The old was sympathetic and settled his little verbal disputes and troubles without friction: we must leave that more to the kampong elders under the new style. But for land work, the most important of a Penghulu's duties, for strictness is tenderness in disguise to the raiat, I confess I look with confidence to the coming school.' (Perak AR, 1909, PGG (Sup) 1910, p. 12.)

68. Perak AR, 1891, C. 6858, p. 23.

69. See Order in Council, 17 Dec. 1881, and Order in Council, 5 July 1885.

the rapid growth which Swettenham envisaged, towns were to play an important part; as he remarked in 1890, he looked forward to a 'system of country towns where each will form the centre and market of the surrounding mines and villages.'⁷⁰ It was necessary, therefore, to improve their condition.

At first he limited himself to extending the provisions of earlier legislation to other parts of the State than Larut and he delegated to his office wide powers through new enactments to alter, cancel or make new rules for the towns as he saw fit.⁷¹ Local requirements sometimes demanded special attention which Swettenham found awkward to provide through his office. Organisation of the townships, collection of refuse, lighting, water and drainage all required local attention. Thus, in 1893, he adopted the system of municipal councils which had been established in Selangor in 1890.⁷² The first of these 'Sanitary Boards' was established at Ipoh and Teluk Anson and later the same year at Taiping, Parit Buntar, Batu Gajah, Gopeng and Tapah.⁷³ The authority for these bodies was an

70. Perak AR, 1890, in FGG, No. 290, 26 June 1891, p. 478.

71. See Orders in Council 8 and 21 of 1890.

72. See Selangor Regulation VII of 1890, 'Conservancy of Towns and Villages.'

73. Perak AR, 1892, C. 7228, p. 26; Perak AR, 1893, in FGG, p. 319.

an Order in Council (enacted some months after the first two Boards were established.)⁷⁴ It enabled the Resident to create Boards and to appoint their members. There were usually six to eight members drawn from the various government departments and from the 'unofficial' community - the local Malay chiefs, the Chinese Capitan or businessman and often a representative of the European planting community - and chaired by the local Collector and Magistrate, or in Taiping by the Secretary to Government.⁷⁵

The jurisdiction of each Board was generally described in the Order as extending to 'all matters relating to conservancy' while some twelve articles defined more precisely its responsibilities for sewage disposal, drinking water, stables and markets; for the preservation of law and order and the upkeep of roads and paths. It was also empowered to make by-laws, but these could only come into force upon the Resident's confirmation and their publication in the Government Gazette. Under an amending Order enacted the same year, the Resident also held the power to levy rates on real property and to alter or cancel any by-law without reference to the Board.⁷⁶ Nevertheless, although the Resident's control of the

74. Order in Council, 7 of 1893 as amended by Order in Council, 17 of 1893.

75. See for example EGG, No. 4, 5 Jan. 1894, p. 3.

76. Order in Council, 17 of 1893.

Sanitary Boards was absolute, it was limited in practice to a general supervision of policy while the day to-day functioning of the Boards was left to the Chairmen.

There was so little order in the administration of justice when Low departed from Perak that it was difficult to speak of a judicial system. Several kinds of courts existed and each administered a body of law only loosely understood by the magistrate and only partially enacted.⁷⁷ In cases involving Chinese or Malay personal law, the magistrates troubled themselves little about the respective codes, while the Chinese and Malay assessors who often sat with them were, in Maxwell's words, 'intensely ignorant on the subject.'⁷⁸ Furthermore, the conflicting jurisdiction of the several courts led to confusion among magistrates and litigants alike.⁷⁹ It was a confusion which earned for the Perak courts the criticism of the Straits Settlements press and 1890 the Attorney General found it possible to describe the courts of all the protected States as 'semi-barbarous and as such prima facie dissatisfied to

77. Indeed, it is doubtful if the magistrates were clear what constituted enacted law. The most complete collection of laws published in Perak are to be found in W. Treacher, (Ed.), The Orders of H.H. The Sultan of Perak in Council from Sept. 11, 1877 to Feb. 29, 1888, but as the author notes, it is only 'fairly complete'. In fact Low had to admit to Council in 1888 that many of the Orders were missing. (FGG, 28 Sept. 1888, p. 56.)

78. Maxwell memo to Col. Sec. 3 Sept. 1894, enclosed in Mitchell to Sec. State, 4 Sept. 1894, CO 273/197.

79. In 1880, for instance, the State Council was asked to decide the jurisdiction between the courts of the Kadzi and Superintendent of Lower Perak in a divorce case. (PSC, 28 Dec., 1880, PMS, p. 8.)

recognition as Courts.'⁸⁰ This was, of course, an exaggeration, but it was, nevertheless, clear to Swettenham that the growth of commerce, commercial agriculture, and tin-mining and the increasing construction of public works necessitated a more efficient judicial system.

Actually criticisms of the Perak courts and the kind of law administered in them had been made as early as 1884.⁸¹ Swettenham was then acting Resident and was responsible for making law in Perak the Straits Settlements Penal Code which had been acted upon by magistrates since 1874.⁸² Again in 1888 some effort was made to supplement Maxwell's instructions of 1882 as to the jurisdiction of the courts; an executive order was issued in which the Resident attempted to set out the magistrates powers more clearly in civil and criminal cases.⁸³ But Swettenham took these reforms much

80. 'The Rawang Tin Mining Co. Ltd. ex parte The Chartered Bank of India, Australia and China,' reported in SLJ, Vol.III, No. 27, Aug. 1890, p. 27. See also minutes and enclosures in Smith to Sec. State, 3 Nov. 1891, CO 273/176.

81. For instance, during a case in a Penang court the defence counsel claimed that it was 'notorious that the administration of Justice in Perak was not based on fixed principles but depended entirely upon the will of the Magistrate, who it is rumoured, in some cases are minors.' 'Regina v. Sidar Khan and Others,' reported in S.W.N. Mysore, SSLR, p. 54; Perak AR, 1884, C. 4958, p. 12.

82. Order in Council, 16 June 1884.

83. Government Notification, 1 Mar. 1888, enclosed in Sel. Rec. K.L. 3153/888.

further in 1890 with the enactment of an Order in Council which determined in detail the jurisdiction and powers of the criminal and civil courts of Perak.⁸⁴ By this law he attempted to provide simple, efficient courts in which the rural suitor might gain 'substantial justice' at small cost⁸⁵ and, also to erect judicial machinery sufficient to cope with the requirements of a highly organised commercial community.⁸⁶ Thus, although the High Court at Kuala Kangsar was abolished, the penghulu and kadzi courts were retained within the unified system with appeals continuing to be possible from the former to the Magistrates' courts and from the latter to the Sultan in Council. On the other hand, with a view to strengthening the higher courts, Swettenham made several changes. Although the Residency Court and the judicial functions of the State Council were preserved, the powers of the magistrates were sharply reduced. Three classes of Magistrates' courts were created, the class of court commensurate with the requirement of the Collectorate. But the most important innovation was the establishment of a 'Senior Magistrate's' court.

84. Order in Council 11 of 1890.

85. Perak AR, 1892, C. 7228, p. 14; Perak AR, 1893, C 7546, pp. 18-9.

86. Perak AR, 1890, in FGG, No. 290, 26 Jan. 1891, p. 465.

It had been Swettenham's wish that there should be a 'reliable judicial tribunal' to which the Magistrates could seek advice or have their decisions reviewed.⁸⁷ To this end he appointed a trained barrister, H.W.C. Leech, to the position of 'Judge of the Residency Court' in early 1890.⁸⁸ Once the new Order in Council came into force he became the Senior Magistrate. Although the court which bore his title could include as members the Resident and the Secretary to Government, he generally sat alone and came to hear most of the appeals from the lower courts and also acted as the principal adviser to the government on legal matters and the administration of justice. To meet the requirements of the increasing number of important and complicated civil disputes, his court was also constituted as a Court of Bankruptcy and Probate with 'similar jurisdiction and powers to those exercised by the Supreme Court of the Straits Settlements.'

The working of this court had the important result of relieving the Resident and Secretary to Government of most of their judicial duties which had become increasingly burdensome. The Residency Court, which had its membership widened to include the Sultan as well as the Resident and Secretary to Government, retained its

87. Ibid.

88. PGG, No. 401, 25 July 1890, p. 433.

original jurisdiction in criminal cases, but in civil actions its authority was limited to hearing appeals from the Senior Magistrate's Court. The appointment, for the first time, of a fully qualified barrister also tended to raise the standard of decisions in the higher courts at least (even if the court did not command the same respect in civil matters as that of the Colony's Supreme Court) and to improve the general procedure and organisation of the other courts. The creation of the Senior Magistrate's court did not, however, mean that there was a formal separation of the executive and judiciary; there was merely a division of labour between officers responsible to the executive.

Further reforms followed, but these were concerned with the kind of law administered in the Perak courts. Between 1893 and 1895 the bulk of Straits Settlements criminal and civil codes were formally adopted as law in Perak. The Perak Order in Council 6 of 1893 respecting procedure in civil appeals was based on the Colony's Ordinance of the same year⁸⁹ while in the following year the Straits law on evidence was enacted by the State Council and gave rise to hearings of criminal cases 'by a jury of seven members.'⁹⁰ Another Order in 1895 led to the adoption mutatis

89. Straits Settlements Ordinance II of 1893.

90. Juries were introduced by Order in Council, 10 of 1894 and the rules for summoning and for governing their organisation were laid down in Order in Council 3 of 1895 and based on Straits Ordinance III of 1892.

mutandis of five more of the Colony's law - the Criminal Justice Ordinance, 1879, the Summary Criminal Jurisdiction Ordinance, 1872, Prevention of Crimes Ordinance, 1880, the General Clauses Ordinance, 1888 and the Penal Code Amendment, 1891.⁹¹ Of course, many of these Ordinances had already become the basis for procedure in the Perak courts before they were formally adopted, but now for the first time they were given legal force. One other enactment is worthy of mention, this Order became law in 1893 and laid down rules for dealing with civil suits involving Chinese.⁹² The increasing prosperity of the Chinese and their tendency to remain in Perak meant that frequently cases which could not be settled by the Secretary for Chinese Affairs and involving such questions as adoption, and inheritance, were brought before the higher courts. This Order recognised 'certain laws and customs of the Empire of China' and set out general principles for guidance in cases where these matters were in dispute. It also provided for the courts to have the assistance of Chinese assessors and 'skilled witnesses.'

ii

In Selangor, Douglas made little attempt to extend his

91. Perak Order in Council 12 of 1895.

92. Order in Council, 23 of 1893.

administrative control of the country into the interior. Residing at Klang, which one visitor likened unto 'an armed post amidst a hostile population,'⁹³ he preferred to consolidate his control of the coastal districts. Collectors and Magistrates were established at Kuala Selangor, Bernam and Langat. Each exercised executive and judicial powers comparable to those held by the district officers in Perak. They were responsible for the maintenance of order in their Collectorates and the collection of revenue derived from the produce imported and exported along the rivers which ran through their districts. The Resident, in addition to his executive duties, also acted as 'Judge' of an 'Ordinary Magistrate's Court' in which he administered law based upon his understanding of the Straits Settlements criminal and civil codes; capital offences were heard before a jury.⁹⁴ In a sense, the Resident's administration merely displaced the ruling hierarchy of Bugis chiefs whose control of the country had rested on their ability to control the estuaries of the more important rivers. Now, however,

93. Bird, op. cit., p. 218.

94. Douglas maintained that he held his position as 'Judge' under the Sultan's authority. Seven members were to form the jury and were to be drawn from the various ethnic groups: one European and two Chinese, Malays and Indians selected from a list of twenty-one persons. (Resident to Col. Sec., 7 Dec., 1877, Sel. Rec. 398/77.) Bird remarked at the time that such a system was very costly to the litigants and described it as a very muddled system, 'Mohammadan law, modified by degenerate and evil custom, and to some extent by the discretion of the resident, existing alongside fragments of English criminal law, or perhaps more correctly of 'justices' justice', the Resident's notions of 'equity' over-riding all else.' (Bird, op. cit., p. 238.)

authority was centrally directed and regulations were uniformly applied by officers responsible to the Resident.

The rise in the price of tin after 1879 brought about a rapid expansion of the industry in Selangor.⁹⁵ It soon became evident that this development would have to be regulated and controlled if the prosperity and growth associated with it was to be sustained. As in Perak the success of the Resident's administration was directly related to the government's ability to share in the profits of this industry. Thus, it was proper that the Resident should regulate such matters as the alienation of land and the immigration of Chinese labour and to provide for the construction of paths, roads and even railways to link the various mining centres stretching from Kuala Kubu to Kajang to Kuala Lumpur and thence to the ports.

Kuala Lumpur was at the heart of this development, it was the residential and administrative centre of the tin industry in Selangor. If the Resident was to control the interior of Selangor it was essential that this dynamic Chinese town should come under his authority. In 1880, however, the whole of Ulu Klang, which included the village of Kuala Lumpur, was ruled by the Capitan

95. The annual revenue of the State in 1879 was £184,387; by 1880 it reached £215,614 and in 1882, £300,423. In 1887 it amounted to £1,153,897. (Selangor AR, 1887, p. 95.)

China, Yap Ah Loy.⁹⁶ The end of the civil war had left him in effective control of the mining industry and so long as the Resident remained on the coast, he continued to strengthen his position. As a member of the Selangor State Council he was able to bring his influence to bear on the decisions of that body. His judicial functions as Capitan China were in effect recognised by the decision of the Resident to extend to him the right to hear criminal and civil cases except those involving capital sentences. The measure of his actual authority is revealed in his ability to continue to issue his own regulations and to levy taxes inspite of the Resident's prohibition.⁹⁷

Douglas made several attempts to reduce the authority of the Capitan China. He tried to have his office abolished, and in 1877 proposed a reduction in his allowance,⁹⁸ presumably in the hope that

96. Syers, writing in 1887, described Kuala Lumpur in 1880 as being 'Practically in charge of the late Capitan China.' (Superintendent of Police to Act. Resident, 25 Aug. 1877, Sel. Rec. Police 2192/87: P182/87.)

97. Middlebrooke, JMBRAS, Vol. XXIV, Pt. 2, pp. 91-3; Gullick, JMBRAS, Vol. XXVIII, Pt. 4, p. 26.

98. Douglas did in fact reduce the allowance, but it was restored on the Governor's instructions. (Act. Col. Sec. to Resident, 24 Oct. 1876, Sel. Rec. Native 6057/76; SSC, 31 Dec. 1877 and 3 Feb. 1879.) The proposal to place a detachment of Police in Kuala Lumpur after the 1875 uprising was not carried out 'in deference to the wishes of the Capitan China.' ('An account of the Selangor Police Force,' Selangor Journal, Vol. I, No. 6, (1892), p. 85.)

he would retire from his office. Again in 1877 and 1881 he laid plans to establish a municipal council to govern Kuala Lumpur.⁹⁹ But all these efforts were opposed by the Governor. Nevertheless, during 1878 the Resident, or one of his officers, visited Kuala Lumpur at least once a month and in 1879 the Superintendent of Public Works and Surveys, D.D. Daly, was instructed to reside there with a view to imposing some kind of control over the mining operations.¹⁰⁰ Daly's principal device for meeting this end was the establishment of a 'Mining Board' in December 1879. Its membership consisted of the Superintendent, the Capitan China, Yap Ah Shak, the Capitan's deputy, and three towkays from Ulu Langat, Kajang and Reko. Its function was to make rules for the mining industry and to hear disputes in connection with the operations of the mines; in its judicial capacity the British office sat as a Magistrate with the Chinese members as assessors.¹⁰¹ Appeals against its decisions could be made to the State Council.¹⁰² But the Mining Board was no answer to the wider

99. SSC, 12 June 1877 and 25 Aug. 1877; SSC, 22 Apr. 1882 and 14 July 1882 and Col. Sec. to Resident 13 June 1882, Sel. Rec. 3918/82.

100. Middlebrooke, JMBRAS, Vol. XXIV, Pt. 2, p. 94.

101. Commissioner of Lands to Resident, 21 Oct. 1882, Sel. Rec. 8131/82, KL. 84/82.

102. SSC, 18 Sept. 1880.

administrative problems which Kuala Lumpur posed. Therefore, in March 1880 the Resident moved his headquarters from Klang to Kuala Lumpur.

A year and a half later Douglas was forced to resign his office after the exposure of irregularities in the Land Department.¹⁰³ Swettenham became Resident in his place. He arrived on the crest of a wave of prosperity and under his vigorous management turned this boom to the Selangor's benefit by opening up the country. He opened a network of cart roads extending the length of the State and began a railway to link Kuala Lumpur to the principal part of Klang; he also encouraged and supervised the re-building of Kuala Lumpur as well as the improvement of the other mining towns and pushed effective administrative control throughout the interior of the country. While he took charge of Kuala Lumpur and its environs, two new administrative districts were created, one in Ulu Langat and the other in Ulu Selangor. Further, although Selangor continued to remain predominantly Chinese, Swettenham reorganised those areas where Malays resided by instituting the system of penghulus which Low had introduced in Perak.

103. An inquiry into Douglas' administration was initiated after a former Collector and Magistrate of Langat, James Innes, brought a number of charges to the notice of the Secretary of State. Mal-practices in the Land Department forced the resignation of both Douglas and his son-in-law, Daly, the Superintendent of Survey and Public Works. (Weld to Anson, 3 Sept. 1882, MS in Raffles National Archives; Weld to Sec. State, 3 May 1882, CO 273/114; 17 June 1882 23 Aug. 1882; 24 Aug. 1882 Co 273/115.)

The scheme was inaugurated in September 1883.¹⁰⁴ As in Perak, each Collectorate was sub-divided into mukims which were placed under the charge of a penghulu. The penghulu was directly responsible to the Collector and Magistrate and held his appointment under a surat kuasa issued by the Sultan in Council.¹⁰⁵ He was remunerated by a small salary and ten per cent. of all 'new' revenue he might collect from his mukim - not a tenth of all revenues as in Perak. In this way he hoped to encourage the penghulus to develop their mukims. They were also required to assist in the collection of land revenue and the registration of alienated land; the supervision of the working of the revenue farms and the clearing of paths, roads and rivers; and the issuing of permits and licenses to wool-cutters, boat owners and proprietors. of fishing stakes. Reluctantly Swettenham empowered the penghulus to settle 'petty cases', impose fines limited to five dollars and hear civil disputes where the amounts involved did not exceed ten dollars. He believed that the opportunity for bribery and corruption would be open to unscrupulous penghulus, but defended the arrangement as a necessity in mukims remote from the district

104. Resident to Col. Sec., 6 June 1883, SSLC Paper No. 23, of 1883, p. 257.

105. For a copy of the surat kuasa see Ibid., pp. 260-1.

magistrates.¹⁰⁶ In other areas the Magistrates were expected to hear such cases and at all times appeals from the penghulus decisions were permitted to his court.

As in Perak, the penghulu scheme, if successfully implemented, would make the headman a useful government servant - Swettenham described him as 'the eyes and ears of the Government.' He could no longer trade or mine ~~least~~ his business interests should interfere with his duties and he was to hold office only as long as he could 'give satisfaction.'¹⁰⁷ At the same time the penghulu's surat kuasa stipulated that the ra'ayat were required to obey whatever 'reasonable order' the headmen might make of them; but whereas formerly the elders or members of the kampong or mukim decided what was reasonable, the Collector and Magistrate now decided what constituted an abuse of power or neglect of duty.¹⁰⁸

The structure of government under Swettenham was characterised, as in the early years in Perak, by a measure of decentralisation. The whole system rested on the Collector and Magistrate who exercised wide powers over his district. But having

106. Ibid., and SSC, 2 Sept. 1883.

107. Ibid., p. 258.

108. Ibid., pp. 259 and 261 and SSC, 2 Sept. 1883.

said that, it is difficult to determine to what extent Swettenham intruded into the affairs of the several districts; it is hard to imagine a Resident of his energy and commanding personality not giving a very strong lead to his subordinates in the development of their districts. The district officer could, for instance, decide how he might deploy the local police detachment and he possessed the authority to expend the funds allotted to him in the annual budget. But how far did Swettenham decide the way in which this would be spent and to what extent did the central departments of the government encroach upon the Collectors' jurisdiction? Moreover, it is not easy to discover whether Swettenham laid down any formal rules governing the jurisdiction and authority of the district officers and the several departments of government. None appear to have existed in 1889, for his successor in that year, W.D. Maxwell - his great rival - remarked upon taking up his post that government officers were at some 'disadvantage' owing to the absence of a body of written law and of detailed printed regulations upon matters connected with their work.¹⁰⁹ Although Swettenham may have disliked what he called

^{as}
109. Selangor AR, 1889, C. 6222, p. 52. What amounted to a reply to this criticism can be found in Swettenham's Annual Report for Perak the following year when he wrote: 'The policy of my predecessor could not be described as one of minute organisation, and his administration was admittedly successful; both for that reason and as the result of my own experience, having been connected with the Native States ever since the inception of the Residential system. I am averse to that excessive organisation in details which tend to degenerate into circumlocution, and what is known as "red-tapism".' (Perak AR, 1890, FGG, 1891, p. 478.)

'red-tapism',¹¹⁰ his apparent failure to properly constitute the departments of government led to a conflict of authority, inefficiency and arbitrary executive action. The prosperity which had enabled him to initiate an ambitious public works programme and to increase the responsibilities of government gave way during 1889 and the early 1890's to a recession which exposed these weaknesses. Redundancy and retrenchment in industry brought about a reorganisation of government, first by Maxwell and by his successor W.H. Treacher.

Following the example of Perak, a 'Government Secretary' was appointed in 1890 who was to perform an important function sustaining order in the administrative machine.¹¹¹ At the same time, Maxwell issued an executive order defining the powers and duties of each district officer. Describing the Collector and Magistrate as in 'general executive charge' of his district he summarised his responsibilities as follows:

- a) To hold Courts, both Civil and Criminal, at the chief station of the district, and at the outlying stations, on days fixed by the Resident, and to act as Coroner;
 - b) To superintend the Land Office of the district; and
 - c) To collect revenue of all kinds, and manage the Sub-Treasury of the district.
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110. Ibid.

111. Selangor AR, 1890, p. 60. Maxwell also described the functions of the Secretary to Government as being comparable to that of a Colonial Secretary in a Crown Colony.

In the Coast districts he is also Harbour Master.¹¹² Thereafter followed a detailed breakdown of the Collector and Magistrate's duties in respect of the district land office and treasury. As well, he attempted to define the Collector's jurisdiction with respect to the technical or central departments: while he was expected to 'exercise general control and supervision' over his district, he was to avoid 'unnecessary interference in professional details' of these departments and limit himself to 'exercising a vigilant superintendence'. When, for example, he found the local public works department officer not performing his duties properly, he was to report the matter to the departmental headquarters.¹¹³

For the first time, the district officer's responsibilities and duties were now brought together in one document. Formerly the want of proper instructions had inhibited the Collector in the performance of his duties, but now with the knowledge of the limits of his authority, it was possible for him to exercise his powers more effectively in the development of his district. Nevertheless, Maxwell's instructions quite properly reduced the wide powers district officers appeared to have exercised under Swettenham, but they also bound the Collector more closely to the

112. 'Minute by the Resident, for the Guidance of District Officers,' published in SGG, No. 105, 16 May 1890, p. 220.

113. Ibid., pp. 220-1.

central authority. The definition of the jurisdiction of technical departments led to frequent reference to headquarters by the Collector.¹¹⁴ In land administration, for the first time, the district officer had to gain the approval of the Resident before any land could be alienated for agricultural purposes. Moreover, when the new land code was introduced in the following year - introducing the new principle of periodic assessment - reference to the Resident (who had displaced the Commissioner of Lands as head of land affairs) became more frequent not only to sort the details of the complicated code, but merely to fulfill its provisions.¹¹⁵

The introduction of the new land code also made it desirable that the penghulu should become a more effective agent of the central government.¹¹⁶ Swettenham's scheme had left the penghulu with one foot in the old order and one in the new. It was not so much the scheme that was at fault as that the penghulus were not properly supervised in ^{their} ~~his~~ new work. In those districts where the Collector and Magistrate was able to devote attention to the

114. Ulu Langat AR, 1892, in SGG, No. 209, 7 July, 1893, p. 465. With reference to this development up to the 1920's see 'The Final Report of the Retrenchment Commission,' in Fed. Co. Paper, No. 16 of 1923.

115. Two enactments governed the new code: Regulations III (Land Code) and IV (Registration of Titles).

116. Selangor AR, 1890, C. 6576, p. 47.

penghulu's work the headmen often proved useful in the local administration.¹¹⁷ Elsewhere the role of the penghulu underwent little change and he ignored his duties. It was also found that payment of a regular salary enabled the penghulu to avoid his traditional responsibility to the mukim. Moreover, the remedy did not rest in dismissing the unsatisfactory penghulu as it might prove difficult to find a successor from the same kinship group - the group which was usually the largest in the mukim. The appointment of an outsider often found he could not command the support of the ra'ayat. As one district office observed, the outsider 'has little influence, and the people refused to confide in him; and in the place itself there is probably no other man who could attempt to fill the position.'¹¹⁸ As this passage suggests, not only was it difficult to find a suitable man for the position, but it was also a problem to endow the penghulu with sufficient authority to carry out his duties. Indeed, in 1889, a Regulation was enacted to try and meet the problem by making contempt of the penghulu's authority an offence punishable by a fine of one hundred dollars.¹¹⁹

117. See Kuala Selangor AR, 1889, p. 303 in SGG, No. 130, 13 June 1890.

118. DOMR, Kuala Langat, May 1890, in SGG, 27 June 1890, p. 333; Selangor AR, 1884, C. 4958, p. 38.

119. See for example Kuala Selangor AR, 1889, p. 303 in SGG, No. 130, 13 June 1890.

Maxwell took the matter a step further when he revived the practice of 'customary service' or krah labour which would enable the penghulu to raise labour to assist, for a small payment, in clearing jungle, making cart roads, paths and anything the Resident might deem proper by 'Malay custom.'¹²⁰ In 1892 he issued new surat kuasas which set out more fully the powers and duties of the penghulu and gave special attention to his responsibilities under the new land code.¹²¹ At the same time, Maxwell issued instructions to the effect that all new penghulus should be elected by the adult population of the mukim.¹²² In this way he hoped the headmen would more easily gain the support of the ra'ayat. Although election by a simple majority, the procedure was circumscribed by the stipulation that the Collector must report on the merit of the successful candidate and the requirement that the Resident should approve the appointment of each penghulu before he was formally installed by the Sultan in Council.

One of Maxwell's first reforms when he came to Selangor was

120. Regulation XV of 1890.

121. The call for a new surat kuasa was made in 1891 by the Collector of Land, Kuala Lumpur, L.P. Ebdon, (Land Annual Report, 1891, in SGG No. 360, 19 Aug. 1892, p. 511.) See also Selangor AR, 1892, C. 7228, p. 33.

122. Government Sec. to D.O.S., 17 May 1892, Sel. Rec., K.L.3015/92.

the reorganisation of the government of rural areas. In 1890 he instituted a municipal council to deal with the special problems of the larger villages and towns. Douglas, as already observed, had attempted to introduce such councils in Klang and Kuala Lumpur but had been prevented by the Governor from doing so.¹²³ Swettenham, on the other hand, administered Kuala Lumpur through his own office with the help of the department of Public Works and other technical departments. In order to regulate the affairs of this large town he issued from time to time 'Government Proclamations' on his own authority.¹²⁴

Maxwell's council's were established under the authority of Regulation VIII of 1890 (Conservancy of Towns and Villages) and called 'Sanitary Boards.' Three were formed in the first year at Kuala Lumpur, Kuala Kubu and Klang. Their members were appointed by the Resident and drawn from the public service and members of the community. Although the State Treasurer chaired the Kuala Lumpur Board, the others were presided over by the local district officer.¹²⁵ The Resident exercised a very close control over the

123. See footnote 99.

124. Gullick, JMBRAS, Vol. XXVIII, Pt. 4., p. 79.

125. The Kuala Lumpur Board also consisted of the heads of the Public Works and Medical departments, two unofficial Europeans, two Malays, one towkay and the Capitan China. (SGG, No. 114, 30 May 1890, p. 276.) The Klang Board was comprised of three Europeans as well as the district officer who presided as chairman, two Malays and one Chinese. (SGG, No. 164, 8 Aug. 1890, p. 414.) And the Board at Kuala Kubu had four Europeans, one Malay and two Chinese members. (SGG, No. 10, 9 Jan. 1891, p. 5.)

activities of these Boards. Their finances were derived solely from a grant of the central treasury authorised by the Resident.¹²⁶ Its bye-laws were not enacted by the Board, but by the Resident acting under authority vested in him in the Regulation.¹²⁷ As one might imagine, this was a cumbersome procedure and after 1895 Treacher on specific matters delegated his powers to make rules to these bodies.¹²⁸

Simultaneous with these reforms, Maxwell took steps to improve the procedure and organisation in the Selangor courts.¹²⁹ Swettenham had laid the foundations for the system. He had brought with him to Selangor in 1882 J.P. Rodger whom he made Chief Magistrate (a post he held concurrently with that of Commissioner of Lands) at a time when the increasing volume of trade and commerce connected with the tin industry brought many civil disputes into the Selangor courts.¹³⁰ The Chief Magistrate's court, therefore, was constituted

126. This grant was financed by the revenue derived from a five per cent annual rate raised under Regulation XI of 1890. An amendment (Reg. I of 1893) enabled the Board to accredit to its own treasury all revenue it raised on its own accord and permitted the Board to determine its expenditure. (Selangor AR, 1895, C. 7546, p. 33.)

127. Regulation VI of 1890, section 3, j.

128. See for example Regulation VII of 1895, section 9.

129. As in Perak these reforms were as well prompted by criticisms raised in the Straits Settlements. See footnote 80.

130. Col. Sec. to Resident, 21 Oct. 1882, Sel. Rec. 3612/82.

in such a way to relieve the Resident as the senior judicial officer of much arduous court work. He was given original jurisdiction in civil disputes and his court became the principal appellate court.¹³¹ Although it was Swettenham's wish to emulate the Colony's judicial system (and he boasted in 1884 that the law and procedure in the Selangor courts had been 'as nearly as possible, assimilated to those in force in the Colony')¹³² neither the courts nor the law administered in them found a place in the law of the country. Only in 1886 were the Straits Settlements Penal Code and Summary Criminal Jurisdiction Ordinance formally adopted as law by the Sultan in Council.¹³³ Two years later the Indian civil procedure code was also formally enacted as law in Selangor.¹³⁴ In the same year the jurisdiction and powers of the various courts were set out in another regulation.¹³⁵

131. Act. Chief Magistrate to Resident, 26 Sept. 1888, Sel. Rec. Courts 2684/88; Resident to Col. Sec., 11 Oct. 1882, Sel. Rec. 7612/82. His jurisdiction in criminal cases was limited to imposing a sentence of not more than seven years and fines not exceeding \$500. Swettenham in drafting the Chief Magistrate's powers, declared that in criminal cases there would be a final appeal 'of course, by Petition to His Excellency the Governor.' (Ibid.) Sir Cecil Clementi Smith in 1891 also maintained that appeals to the Governor could be heard from the Sultan in Council. (Smith to Sec. State, 3 Nov. 1891, CO 273/176.) There was no legal foundation to these claims. Nevertheless, the practice grew up of sending petitions to the Governor through the Resident by those seeking redress. The Resident would forward besides the petition the relevant evidence and minutes on the case and the Governor's decision was usually acted upon.

132. Resident to Col. Sec., 12 Feb. 1884, Sel. Rec. 418/84.

133. Respectively Straits Ordinances No. IV of 1871 and XIII of 1872. SSC, 30 Jan. 1886 and Selangor AR, 1886, C. 5566, p. 39.)

134. SSC, 2 Aug. 1888.

135. Order in Council, 18 Dec. 1888.

Maxwell made no attempt to alter the structure of the system he had inherited, but confined himself to improving the way in which the courts functioned. In 1890, for instance, he published his 1882 Perak 'Instructions' as a guide to district magistrates on procedure in their courts and had the Indian Evidence Act adopted as law. He also instructed the courts to recognize Chinese customs especially in respect to inheritance and succession.¹³⁶ Civil disputes involving hukum shara' had been dealt with since 1885 by imams with special judicial powers and a kadzi.¹³⁷ In 1890 Maxwell took the opportunity of the forced retirement of the kadzi to persuade the principal Malays to agree to an arrangement whereby cases usually referred to the kadzi' court would henceforth be heard by the Chief Magistrate with a kadzi sitting as an assessor. The kadzi's court was then allowed to lapse.¹³⁸

It was left to Treacher, however, to define the powers of the courts as had been done in Perak. The earlier legislation of

136. 'Yap Tham Thai alias Yap Fook Siong v. Low Hup Neo.' in FMSLR, 1919 p. 383; and 'Ong Cheng Neo v. Yap Kwan Seng,' SSLR, 1897 (Sup.) p. 1.

137. In 1885 a kadzi was appointed for the whole of Selangor under an Order in Council enacted the previous year. (Selangor AR, 1885, C. 4958, p. 93; Order in Council, 14 June 1884.) It provided that the kadzi should 'decide disputes involving questions of Muhammadan law and custom.' He was also empowered to appoint imams, who, under an 1877 Order gained the unusual authority to hear such cases also.

138. SSC, 7 Apr. 1891.

1888 had failed, except in instances, to decide what these were. Treacher had drafted the Perak 'Courts' Order in Council in 1890 and therefore closely modelled his Selangor enactment on this law. There was no kadzi court and the title of the 'Chief Magistrate's Court' was retained in place of 'Senior Magistrate' as in Perak. But beyond these differences, the formal provisions were nearly identical.¹³⁹ It included, however, provisions which formed amendments to the principal Perak enactment making it possible for the court in criminal cases to be assisted by assessors or a jury. And in 1894 an executive order made it compulsory for all cases involving capital offences to be heard before a jury.¹⁴⁰

iii

In Sungai Ujong, the structure of government remained simple under the first two Residents; with one or two subordinate European assistants and a small police force he was able to maintain order, collect the revenue and encourage the development of the small country. However, under the third Resident, Paul, many of the administrative forms developed in Perak and Selangor were adopted in Sungai Ujong. As already observed, a State Council was established in 1883. In the following year Paul introduced a 139. Regulation XI of 1893.

140. Courts Department AR, 1894, in SGG, No. 185, 26 Aug. 1895, p. 167.

penghulu scheme along the lines developed in Selangor and Perak. This step became desirable as his administrative control was extended to the outlying areas of Sungai Ujong itself and to the districts of Lukut and Sungai Raya, which although ceded to Sungai Ujong in 1878, did not come under its administrative control until 1885. The implementation of the land code in 1882, which hitherto had been prevented by the refusal of the Malays to take out titles to their lands, brought the Resident into closer contact with the Malay ra'ayat.¹⁴¹ With a view to regularising this contact and bringing the headmen under some kind of formal control, Paul instituted a penghulu scheme. The penghulus' powers were laid down in an Order in Council (8 January 1884) which closely followed the Selangor surat kuasa with the difference that it delegated fewer executive responsibilities to the headman and limited his income to a fixed salary and a tenth of court fees.¹⁴² Only the chiefs of the waris, many of whom became penghulus, retained the right to collect a royalty (hasil tanah) on tin exported from their districts.

141. Sungai Ujong AR, 1881, C. 3428, p. 36. The land code at this time was based on regulations issued by Murray and Paul. (See SSGG, No. 240, 21 Sept. 1877, p. 567 and No. 344, 11 Aug. 1882, p. 784.) In 1887 the existing regulations were 'codified' and adopted formally by the State Council. (Sungai Ujong AR, 1887, C. 5566, p. 116.)

142. Order in Council, 8 Jan. 1884 'Regulations for the Guidance of Penghulus.'

This amounted to ~~£~~1.50 a bhara and until 1887 was collected by the chief themselves; after that date, however, it was commuted for a fixed allowance.¹⁴³ As in Perak and Selangor, the penghulus exercised limited judicial powers with appeals open to litigants to the Resident.

The first 'Collector and Magistrate' was appointed in 1885 when a British officer was established at Kuala Klawang in Jelebu. Although subordinate to the Resident of Sungai Ujong, he did not immediately adopt the administrative forms which had been developed in the later. The penghulus scheme was never imposed on Jelebu; rather, as has been described above, the positions of the chiefs of the waris and suku clans were recognised although, under the 1886 treaty, they relinquished their right to collect revenue. Their authority over their anak bush found expression in their right to hear disputes between them though the presence of the Collector and Magistrate made it possible for ra'ayat to appeal against their chiefs' decisions.¹⁴⁴ The Collector exercised his powers to

143. Sungai Ujong AR, 1887, C. 5566, p. 116; see cover note to SUSC. The allowance was in fact a lump sum in lieu of their right to collect the duty, initially ~~£~~200 per mensem, which they were to distribute amongst themselves. (See Proclamation in SUSC, 20 May 1887; SUSC, 9 Aug. 1887.)

144. See Chapter III, pp. 145-6. Jelebu AR, 1891, p. 4 For the effect of the ability of the ra'ayat to turn to the Collector's court upon the social institutions see Jelebu AR, 1892, p. 11.

adjudicate in civil and criminal cases under the treaty of 1886 as he did in the administration of the State generally.

The Collector and Magistrate who succeeded the 'Collector of Revenue' at Port Dickson in 1892 performed the same duties in this 'Coastal' district which comprised the ceded territories and the southern most part of Sungai Ujong proper on the Linggi River.¹⁴⁵ Here the penghulu system was enforced. But as the communications improved between Jelebu and Sungai Ujong and the Coastal district administrative practice became standardized while after 1886 legislation enacted by the Sungai Ujong State Council came to be enforced throughout the Resident's administration.

It has already been observed that the outstanding feature of the administration of what has been called the 'old' Negri Sembilan - which comprised the Sri Menanti confederation, Tampin and Rembau - was Lister's reliance upon the existing political system. Residing at Kuala Pilsh, the Resident administered the Sri Menanti states and Johol, while his Collector and Magistrate (as he was called after 1887) established his headquarters at Tampin and was responsible for Rembau, Gemencheh and Tampin.¹⁴⁶ Lister's main

¹⁴⁵. Sungai Ujong AR, 1892, C. 7228, p. 61.

¹⁴⁶. Negri Sembilan AR, 1893, p. 11.

task was to devise a way of governing the mass of Malays who earned only a subsistence living from the cultivation of padi and garden orchards and by rearing live-stock and poultry. Cash crops were grown, especially tapioca and gambier as well as some pepper and coffee, but for the most part by Chinese who worked their estates with Chinese labour. Tin was not mined in sufficient quantities to give the State a large return of revenue. The authority of the traditional clan-heads was upheld, therefore, not only as a useful means of maintaining peace and order, but also as the least expensive way of administering these tiny States.

The control of land and a share in wealth derived from it was crucial to the successful administration of Negri Sembilan. It is not surprising, therefore, that the first 'laws' introduced by Lister in 1887 was the 'General Land Regulations'.¹⁴⁷ They were first introduced in Sri Menanti and later extended to the other States.¹⁴⁸ Under this the control of the land by the waris was, in Lister's words, 'knocked on the head by Muhammadan law' and vested in the ruler.¹⁴⁹ Rent rolls, kept in Malay, were than

147. Negri Sembilan AR, 1887, C. 5566, p. 129. This land code had to be enacted by each ruler as the State Council had not been established yet.

148. Negri Sembilan AR, 1887, C. 5566, p. 129.

149. Lister, JSBRAS, Dec. 1890, p. 308. .

compiled on clan basis (the waris being considered as one clan) and certificates of titles were issued for each holding.¹⁵⁰ No attempt was made to survey these holdings as there was insufficient funds, but it was Lister's opinion that the Malay system of demarcation was adequate and, indeed, there appears to have been few disputes over boundaries.¹⁵¹ An annual quit-rent of one dollar was levied on all Malay holdings from the beginning of 1887 and commencing in 1889 further revenue was raised by levying a five per cent tax on the total produce of all land.¹⁵² But this system worked because the lembaga collected the revenue. Each was responsible for collecting the assessment of his anak buah which he would turn over to the Resident or Collector and Magistrate. They also assumed responsibility for all arrears among their people.¹⁵³

Lister believed it was a more efficient way than the penghulu-mukim system in Perak and Selangor for collecting land revenue.

^{150.} ^{land} Tampin AR, 1897, NSGG, (Sup), 24 June 1898, p.1 ; Negri Sembilan AR, 1887, C. 5566, p. 129; 'Extracts from the Diary of the Officer in Charge, Sungai Ujong, 1894' in Sungai Ujong Notification, SGG (Sup.), No. 71, 6 July, 1894, p. 48.

^{151.} Negri Sembilan AR, 1888, p. 10.

^{152.} Negri Sembilan AR, 1887, C. 5566, p. 129. Negri Sembilan AR, 1889, C. 6222, p. 68. This levy was not applied to padi or orchard land until 1893. (Negri Sembilan AR, 1893, p. 4.)

^{153.} ^{land} Tampin AR, 1897, in NSGG, (Sup.), 24 June 1898, p.1,

He described the lembagas as being 'most diligent' collectors, but of course their personal interest in a large revenue was greater than the Selangor penghuls' because their entire income was derived from this source.¹⁵⁴

As in the other States in the early years, the administration of justice followed rough and ready lines. Although the Indian Penal code was formally adopted as law in 1889,¹⁵⁵ in practice both officers heard more serious criminal cases and assumed an original jurisdiction in civil disputes between litigants where one party was not a Malay and generally were prepared to hear appeals from decisions of all other courts. In carrying out these duties, the Resident and the Collector and Magistrate each had the assistance of a Malay who bore the title of 'Assistant Magistrate.'¹⁵⁶ They often sat alone or in conjunction with either officer as an assessor.

The appointment of an Assistant Magistrate to Rembau in 1888 participated a crises however. This officer was one Dato Mentri Lela Perkasa, a chief of the waris Gedang, and one of the Orang Besar Undang which theoretically constituted a sort of privy council to the Dato Penghulu. His special jurisdiction was taken as a direct challenge to their authority by the lembagas and waris chiefs

154. Negri Sembilan AR, 1892, p. 11.

155. Order in Council, 9 Dec. 1889.

156. Negri Sembilan AR, 1887, C. 5566, p. 130.

to settle cases involving their anak buah. After protracted negotiations a modified system of courts was introduced. A 'Magistrate Police Court' and a 'Court of Requests' modelled upon the Colony's courts were to be established and presided over by the Collector and Magistrate of Tampin and the Assistant Magistrate. A 'Supreme Court' and 'Court of Appeal' were also formed and were to be presided over by the Resident and the Dato' Penghulu. This arrangement was a face saving device, but one which established the right of the Magistrate to hear cases in Rembau. In practice he exercised this right only during his periodic visits to Rembau while the Assistant Magistrate was removed from the ruler's district to Kendong on the border. The chiefs continued to exercise their right to settle disputes between their anak buah, but serious criminal cases were now heard by the Collector and Magistrate while the ra'ayat could appeal to the latter against the decisions handed down by their chiefs.¹⁵⁷

In a sense these courts rivaled one another; the chiefs gave their decisions according to adat while the Collector and Magistrate even though he took cognizance of adat doubtless modified it by his own notion of equity. A third rival system of law - Islamic law was also recognised by the Resident. In 1889 he appointed a kadzi with

157. Negri Sembilan AR, 1888, C. 5884, p. 102; Negri Sembilan AR, 1889. C. 6222, p. 68.

authority to sit either alone or with the Resident or Magistrate to hear cases involving Islamic law.¹⁵⁸ The precise jurisdiction of the kadzi's court is not clear, but initially, at least, it was no doubt concerned with matrimonial suits. It would appear, however, that gradually it was widened to include questions of succession and inheritance; certainly in the Magistrate's courts there is evidence that Islamic legal principles often took precedence over adat in such matters.¹⁵⁹

In 1893 the jurisdiction and powers of the several courts were formally defined in a law which closely modelled on the Perak Order in Council of 1890.¹⁶⁰ The courts of the Penghulus, lembagas and kadzis were preserved, but in their cases their powers were set out in the surat kuasa of the office holder. Appeals from the kadzis' courts could be made to either one of the three rulers while appeals from the Penghulu's decisions could be made to the Residency Court.¹⁶¹ Appeals from the decisions of the lembagas were to the first class Magistrate's court. But while this enactment tried to bring the old Negri Sembilan formally into line with the other States, in

158. Negri Sembilan AR, 1888, C. 5884, p. 103; Negri Sembilan AR, 1889, C. 6222, p. 72.

159. E.N. Taylor, JMBRAS, Vol.

160. Order in Council, 11 of 1890

161. Ibid.

practice the judicial system carried on much as before until after 1895. In Rembau, for instance, the bench consisted of the Collector and Magistrate of Tampin - a first class magistrate, two of the waris chiefs as third class magistrates and was assisted by the remaining waris chiefs and lembagas. The chiefs were able to cross-examine the witnesses while a member of a suku could expect his chief to act as a counsel for him. The remainder of the chiefs formed an informal jury - under the 1893 enactment they sat as assessors. It was a useful arrangement which in complicated civil cases enabled the Magistrate to hear all the issues discussed by the best informed persons on adat.¹⁶²

The static nature of the economy and the limited revenue prevented Lister from developing an elaborate administrative structure. In 1892, for instance, the total revenue of Negri Sembilan amounted to only a little more than that spent by Sungai Ujong on its establishment. Her own expenditure on establishments amounted to less than one quarter of the total revenue although its population was almost twice as large and its territory nearly half again the size of Sungai Ujong.¹⁶³ But this was a transitional phase in the gradual combination of the several States which constituted

162. Tampin AR, 1896, in NSGG, No. 71, 12 Mar. 1897, p. 83.

163. See Negri Sembilan AR, 1893, p. 14.

modern Negri Sembilan. At the beginning of 1895 the old Negri Sembilan was combined with Sungai Ujong and Jelebu for administrative purposes under one Resident residing at Seremban. Later in the year the States formally united in a 'Confederation'.¹⁶⁴ With political unity came administrative uniformity which gradually brought the administration of the old Negri Sembilan more into line with practice in Sungai Ujong and the confederation's northern neighbours. The five regional administrative units remained as before: these were Seremban, Coast, Jelebu, Kuala Pilah and Tampin. With the removal of the Resident to Seremban a Collector and Magistrate was appointed to Kuala Pilah. One State Council was established for the entire Confederation and Sanitary Boards were introduced.¹⁶⁵ And an attempt was made also to try and bring the administration by the headmen into line with practice in the other States.

The most important step in this direction was taken in 1897

164. SUGG, No. 154, 21 Dec. 1894, p. 175. The confederation treaty was not signed until 8 August 1895. (Maxwell and Gibson, Treaties, p. 64.)

165. For a description of the 1895 State Council see above pp. Five Sanitary Boards were established all in 1897; these were Seremban, (NSGG, No. 176, 23 July 1897, p. 195.), Kuala Pilah and Johol, Kuala Klawang and Titi, Port Dickson, Tampin and Chenong, (NSGG, No. 187, 6 Aug. 1897, p. 200.)

with the introduction of the new land code.¹⁶⁶ It completely replaced the system of land administration which Lister and Hale had built up. It abolished 'customary' titles; rent rolls were no longer determined by suku but territorially. For the first time holdings were surveyed. Simultaneously, the sembaga were prohibited from collecting land revenue.¹⁶⁷ After Lister's death in 1897 there were many criticisms of the honesty and efficiency of these chiefs with the result that their role in the collection of land revenue was reduced to one of gathering their anak buah before the Collector on a given day so that the ra'ayat might pay their assessment.¹⁶⁸ The Resident, E.W. Birch, also laid down that the sembagas would no longer be entitled to receive a share in the land revenue based on a percentage, but were to be paid a fixed allowance.¹⁶⁹ Although the sembaga continued to be responsible for his suku and not to the inhabitants of a territorial unit, the mukim, the Resident issued instructions in 1898 which formally, at

166. Enactment XXIII of 1897 which was enacted uniformly in all four States.

167. Negri Sembilan AR, 1897, C. 9108, p. 47.

168. In 1894 Hale mentioned that he thought the sembagas would have to be prevented from collection of revenue. (Extract from the Diary of the Officer in Charge, Sungai Ujong, 1894, in Sungai Ujong Notification in SGG, (Sup.) No. 71, 6 July 1894, p. 48.) See also Commissioner of Lands and Mines, AR, 1896, in NSGG, No. 262, 15 Oct. 1897, p. 272; Tampin AR, 1897, in NSGG, (Sup.) 24 June, 1898: 'Notes', NSGG, 14 May 1897, p. 128.

169. Ibid., and Negri Sembilan, AR, 1897, C. 9108, p. 48.

least, brought the powers and duties of the penghulus of Sungai Ujong and the lembagas into line.¹⁷⁰

iv

Before 1895 the Resident's establishment in Pahang contracted rather than expanded as in most of the other States. The ambitious arrangements which the first Resident had made for the administration of the country in 1889 had to be modified after the rebellion. The uprising merely aggravated the already strained financial position of Pahang, a condition which was not relieved for many years. The expectations of those who believed that Pahang possessed considerable mineral wealth was never fulfilled. Mining, nevertheless, proved the most lucrative source of revenue, but it failed to reach the proportions derived in Perak and Selangor from the tin mining. This single fact always limited the State's growth and consequently restricted the size of the Resident's administration.

Initially, Rodger created some six Collectorates in Pahang, but during the retrenchment after the rebellion, these were reduced to four, Kuala Pahang and Rompin being joined to the district of Pekan.¹⁷¹ The latter became the responsibility of the Resident

170. 'Instructions to Penghulus and Lembagas,' in NSGG, No. 212, 19 Aug. 1898, pp. 221-3.

171. Pahang AR, 1889, C. 6222, p. 77.

while Collector and Magistrates were placed in charge of Temerloh and Kuantan. The officer appointed to Ulu Pahang, the most important mining district in the country, was entitled 'Superintendent'. Each with a small detachment of police were responsible for maintaining order, collecting the revenue of their district and administering justice.¹⁷² There is no documentary evidence available to suggest precisely what powers they were given, however, as their reports indicate, they performed a role identical to the Collectors and Magistrates of the West Coast States. Doubtless, as in the early years of the other protected States, these officers possessed wide powers. Distances alone made it necessary in this large State that they should have sufficient authority to expedite all matters on the spot and without the necessity to refer to the Resident.¹⁷³

Although Rodger was not prepared to allow the chiefs any substantial measure of executive power, he sought to preserve their authority as a useful means of exercising some control over the population at large.¹⁷⁴ To secure this end he formally defined

172. Including the district officers' there were seventeen police posts scattered throughout Pahang before the uprising. (Pahang AR, 1890, C. 6576, p. 92.)

173. See for example the legislation in these early years as well as the Annual Reports for evidence to support this conclusion.

174. See Chapter III, pp. 111/2

their pegangans (districts) and in another Order in Council set out the powers and duties of the chiefs and their headmen.¹⁷⁵ Each held his position under a surat kuasa. It up-held his right to hear all 'petty cases' in his district and stipulated that no case could be taken elsewhere unless the headman had given his approval. At the same time to guard against abuses, his anak buah were permitted to report him if he exceeded his authority and an appeal was possible from his judicial decisions to the district officer. According to his rank the headman could impose fines in criminal cases up to five, fifteen or thirty dollars while the more serious offences were heard before the Collector and Magistrate. But while his surat kuasa gave him very limited executive powers, in time his functions were widened to permit him to issue licenses, collect some small duties and in one district, Kuala Lipis, penghulus were empowered to give land grants up to five acres.¹⁷⁶ At no time, however, do they appear to have been able to collect land revenue.¹⁷⁷

The structure of the Resident's administration of Pahang remained substantially unaltered by Federation in spite of the

175. Linehan, JMBRAS, Vol.XIV, Pt. II, pp. 137-8 and Order in Council I of 1890.

176. Inspection Report on the State of Pahang, PaGG, No. 30, 1 Dec. 1897, p. 36.

177. For criticisms of their role see Malay Mail, 29 Aug. 1901.

greater demands placed upon it. The provisions of many Enactments - uniformly enacted throughout the Federation - were either unsuited to conditions in Pahang or impossible to implement unless the compliment of European staff was considerably increased. The implementation of the land code of 1897 was accomplished with great difficulty and over many years and much of the more complicated legislation was never fully enforced in Pahang.¹⁷⁸ Although a road was opened from Kuala Lipis to Kuala Kubu in Selangor in 1899 the expected flow of commerce and investment did not quickly follow and the mining industry failed to develop sufficiently to meet the cost of the Resident's administration.¹⁷⁹ By the turn of the century the country's debts amounted to three and half million dollars.¹⁸⁰ Clifford, then Resident, was able to remark that it was 'now a drag on the rest of the Federation';¹⁸¹ ironically it was Pahang's insolvency in 1892 which had initiated the discussion between the Governor and the Colonial Office which led to the establishment of Federation.

178. Report on Land Officer of Pahang, 1898, in PaGG, (Sup.) 2 Jan. 1899, FMS Land Departments AR, 1899, in NSGG, 8 June 1900, Malay Mail, 29 Aug. 1901.

179. The road was open 19 January 1899. The Resident moved his headquarters to Kuala Lipis the previous June in order to establish closer contact with Kuala Lumpur. Resident Report for June and July, 1898, in PaGG, No. 134, 1 Sept. 1898, p. 331, and Resident Report for January, February and March 1899, in PaGG, No. 70, 1 May 1899, p. 41.

180. Pahang AR, 1899, C. 382, p. 71.

181. Pahang AR, 1900, C. 815, p. 92.

CHAPTER V

THE TREATY OF FEDERATION

i

In the Malay Peninsula, although intervention was partly motivated by the desire to consolidate strategic political frontiers, it received powerful impetus from the process of 'integrating' new regions into an 'expanding economy'.¹ As the events surrounding the introduction of British Residents illustrates, the peace and prosperity of the Straits Settlements was bound up with the tin industry of the western Malay States. Capital and labour were channelled into Perak, Selangor and Sungai Ujong through Penang, Malacca and Singapore. Chinese, sometimes in conjunction with European merchants, but usually in some kind of partnership with a Malay district chief, worked the tin fields of these States. An economic order developed, founded on the tin industry; it possessed a basic unity which cut across State and Colonial boundaries linking the mainland to the settlements in a single economic system. The introduction of British Residents secured the preservation and expansion of this economic activity. Although the bulk of the population cultivated food crops or fished, the income

1. J. Gallagher, and R. Robinson, 'The Imperialism of Free Trade,' Economic History Review, Second series, Vol. VI, No.1, (1953), p. 5.

derived from the tin industry far exceeded this sector of the economy until the introduction of rubber towards the end of the nineteenth century. The cultivation of tapioca, gambier, pepper and later coffee as cash crops could not rival tin as a source of revenue.

The tin industry, therefore, completely dominated the economy of the region. The supply, organisation and employment of Chinese labour, the accumulation and investment of capital; and the whole complex financial structure of the industry defied political boundaries. Labour and capital were raised in or through the Colony; mines were worked in the Malay States and the tin ore was smelted either near the mines or in the Straits Settlements and shipped to Europe. It is not surprising, therefore, that the administrative history of these States is intimately bound up with the efforts of Residents to assist and facilitate the further development of the industry. Indeed, the first administrative act of the British in Perak in 1874 was to settle the boundaries and supply of water of the Chinese miners in Larut; as Swettenham wrote later it was of 'first importance' to regulate this industry as the Malay States derived most of their revenue from it.²

The enactment of land and mining laws strickly regulated the ownership and demarcation of land and the supply of water to mining lands. Although Chinese mining customs were preserved in respect of methods of extraction and particularly of the organisation and employment of labour, regulations were drawn up to formally control

2. Swettenham, British Malaya, p. 228.

these conventions and prevent the gross abuse of labour.³ The movement of immigrants, the nature of their employment and the protection of both employers and employed were the subject of enactments in both the colony and the West Coast States.⁴ Incentives were held out to the industry. Stable, ordered government was quickly established attracting investment in the industry. The revenue farms, in particular those of opium, were let to Chinese capitalists, who financed the mining, as an inducement to invest further in the industry and as a means of allowing them to diversify their investment. Roads and railways were pushed into the interior to link the mining districts with the coastal ports.⁵ Towns sprang up in these areas, the more important becoming the principal administrative centres as the Residents moved their headquarters to these the most prosperous

3. Wong Lin Kin, 'The Malayan Tin Industry,' p. 338.

4. The clearest example of this is in connection with Indian immigration. Compare the laws enacted in Perak, Selangor and Sungai Ujong in 1884 and in the old Negri Sembilan in 1889 with Straits Settlements Ordinance No. V of 1884.

5. By 1893 Perak had ~~by~~ two lines, the Port Weld-Taiping serving Larut and the Teluk Anson - Tapah line which formed the first part of a service to the Kinta valley; Selangor had one the Klang - Kuala Lumpur line of twenty-two miles and Sungai Ujong was served by a line from Port Dickson to Seremban. (C.A. Fisher, 'The railway geography of British Malaya,' The Scottish Geographical Magazine, Vol.64, 1948, pp. 125-6; Fifty Years of Railways in Malaya, 1885-1935, (Kuala Lumpur, (1935), pp. 9-14; See also Swettenham's survey of railway development in his memo. to Sec. State, 17 Feb. 1896, CO 273/223.)

districts of each State.⁶ Administrative problems of the mining districts required solutions very different from those of the agricultural rural areas; social and economic complexities of governing large numbers of Chinese gave rise not only to special legislation affecting them, but also required the creation of special departments, such as the Secretary for Chinese Affairs to deal directly with the Chinese and to enforce the laws enactments pertaining to the tin industry.⁷

It became the principal responsibility of the Resident to regulate and facilitate this sector of the economy and not surprisingly the kind of administration which developed in the three tin producing States bore a marked similarity. Nevertheless, each developed independently of its neighbour. For instance, although Perak, Selangor and Sungai Ujong had their own railway systems by 1890, they were not linked to one another. Telegraphs developed in the same way, and although Perak opened its own telegraph system in 1876 it was not linked to Selangor until 1891.⁸ Other departments such as public works,

6. The Perak Resident moved his headquarters from Kuala Kangsar to Taiping in 1888; the Selangor Resident from Klang to Kuala Lumpur in 1880; the first Resident of Negri Sembilan in 1895 established his office at Seremban rather than Kuala Pilah; and the Pahang Resident moved from the coast to Kuala Lipis when the road to Selangor opened in 1898.

7. No Secretary for Chinese Affairs ~~were~~^{was} appointed to Negri Sembilan or Pahang until after Federation.

8. Perak Annual Handbook and Civil Service List, pp. xiii-xiv.

surveys, audit, police, education and medicine sprang up, performing identical functions in each State. Moreover, as the responsibilities of government increased and better trained officers joined the State services, the cost of maintaining these separate establishments rose. By the 1890's, therefore, in Perak, Selangor and Sungai Ujong (with Jelebu) there had grown up three expensive administrations, each under a British Resident, which functioned quite independently of one another. As the lines of communication were directed to the Straits Settlements, so the Residents received their directives from the Governor of the Colony; but there was seldom any contact between States and Resident.⁹

Although the most striking developments in the administrative history of these States were made in response to the expansion of the

9. The relationship of the Residents to the Governor was set out in 1876 by Jervois when he declared that the 'Residents in Native States should be looked upon as part of the Central Government of these settlements.' (Assistant Col. Sec. to Lt-Gov. of Penang, Sel. Rec. 174/76.) The Governor through an Assistant Colonial Secretary for Native Affairs (a post held by Swettenham from 1876 to 1882 in which year the title was changed to Second Assistant Colonial Secretary) (Jervois to Sec. State, 6 Mar, 1876, CO 273/83; SSGG, No. 68, 31 Mar. 1876, p. 235; Weld to Sec. State, 14 June, 22 Sept., 31 Oct. 1881, CO 273/109,) and with the advice of the Colony's Executive Council, especially in the early years, kept a close control of these administrations. He approved the annual budgets, excess expenditure, appointments with salaries in excess of twenty-five dollars a month and all matters affecting policy. Redress against the Governor's decisions were open to the Secretary of State, but generally the Governor and Residents contrive to keep the Colonial Office out of Malay States affairs. (On this latter point see E. Sadka, 'The Colonial Office and the Protected Malay States,' in J. Bastin and R. Roolvink, (Eds.) Malayan and Indonesian Studies, (London, 1964.)

tin industry, there were factors which worked against a rationalization of British administration. There were ancient jealousies and rivalries between rulers which appeared to militate against any formal unification of the States. For instance the transfer of Linggi and Sungai Raya to Sungai Ujong from Selangor in 1878 had been achieved only in the face of considerable opposition in Selangor.¹⁰ The persistent effort of the Yam Tuan of Sri Menanti to establish a hegemony over the Negri Sembilan was fiercely resisted especially by Jelebu and Sungai Ujong.¹¹ Perak and Selangor had a long history of animosity and anyway neither were likely to share their prosperity with the poorer States. Furthermore, the bulk of the population did not participate in ^{the} mining sector of the economy. The kind of administration which reached the Malay was different in many important respects to that in the tin mining districts, it was limited in its degree of direct control by the district officer and Resident. In all areas differences of custom, personal law, religion and language combined to inhibit the growth of a single unified system of administration.

The tin mining industry expanded rapidly throughout the 1880's. Malaya became the world's largest producer of tin by 1883.¹² The total

10. Maxwell and Gibson, Treaties, p. 212. See the correspondence in Robinson to Sec. State, 2 Aug. and 13 Aug. 1878, CO 273/95. The Sultan's protest to the final settlement of boundary under this agreement is recorded in the Selangor State Council Proceedings, 16 Feb. 1885.

11. See Chapter IV, pp. 104, 147.

12. Wong Lin Ken, 'The Malayan Tin Industry', p. 164.

revenue of Perak rose from £692-861 in 1881 to £2,776,583 in 1889 and in Selangor for the same period from £235,227 to £1,828,427. By 1892 the revenue of the two States, individually, exceeded that of the Straits Settlements. As capital and immigrants poured into the States there was progressive increase in road and rail development and urban expansion. Investment continued on all fronts with a corresponding increase in trade and commerce of all kinds. Even European investment, although still negligible in the tin industry, appeared to find more outlets particularly in agriculture - coffee attracting special attention in the early 1890's - public works, banking and commerce. But this prosperity tended to overwhelm the administrations of these States. The demands made upon the short-staffed government departments lead to inefficiency and arbitrary rule. District officers became bound to their office by paper work especially in matters arising from applications for land and civil litigation.

A decline in the tin prices during 1889-91 threw the weaknesses of the administrative machine into sharp relief and strained State finances already burdened by large public work projects.¹³ Abuses

13. Comment of recession in Perak AR, 1890. Revenue derived from tin exported from Selangor and Perak dropped by five per cent during these four years (T. Lister, op. cit., Appendix E14, p. (41).) For the fluctuation in the price of tin see the 'Chart showing output of tin and tin-ore from the F. M. S. for the last sixteen years and annual average price in dollars and sterling.' in the Resident-General AR, 1904.

were revealed and the judicial system in particular came in for criticism from business and legal community in the Straits Settlements.

Swettenham's promotion to be Resident of Perak and Maxwell of Selangor offered an opportunity to secure some reform. In response to Straits ^{government} Settlements criticism and in accordance with their own notions of good / both officers attempted to introduce a larger element of crown colony / government. To bring the States more in line with colonial procedure a 'Secretary to Government' was appointed in each State while in these States, and as well as in Sungai Ujong and old Negri Sembilan, the judiciary was reorganised. Municipal government was introduced for the first time and there was a general reorganisation of the central and district departments of government.¹⁴

But these reforms only served to expose the lack of co-ordination between the States on a wide variety of matters. For instance, Maxwell introduced in Selangor a modified form of the Straits Settlements land code based upon the principal of periodic assessment. No other State was prepared to adopt it. Perak refused for several years to follow Selangor's example of introducing Sanitary Boards as a means to governing urban areas, while Selangor failed to provide its courts with clearly defined powers sanctioned in law. There were wide differences in the scale of taxation and in the sources of revenue.¹⁵

14. See Chapter IV.

15. See Lister memo. enclosed in Smith to Sec. State, 28 Oct. 1891, CO 273/176.

The objections of the Straits Settlements critics remained. In the first place, there was a multiplicity of administrative systems; second, there was the existence of different laws and regulations in the five States on the same subject; and finally, the impartiality of the courts and the kind of laws administered in these courts^{was} in doubt. In short from the point of view of these critics, there was little security for capital investment in the Malay States.

These criticisms throughout the late 1880's and early 1890's was evidence of the Straits Settlements own problems. The effect of the recession during these years were aggravated by the increase of the Military Contribution to (100,000) the Straits Settlements was required to make for its defence in 1889. Both the officials and unofficials joined in protesting against this increase and in public meetings and formal resolutions in the Legislative Council they rejected the argument that such a sum was necessary for the purely local defences; it was unfair to ask the Colony to pay for the maintenance of an Imperial base.¹⁶ As the sum was paid in sterling the Colony's contribution gradually increased as the value of the dollar declined after 1890. Thus, between 1891-2 the Straits Settlement contribution increased by twenty-five per cent.¹⁷ At the

16. Sec. State, 13 Dec. 1889, in Smith to Sec. State, 1889, CC, and see summary of history in R. Emerson, Malaysia, a study in direct and indirect rule, pp. 306-11 and correspondence in CC 382/9, Items 123 and 124.

17. See table of Exchange value of Straits dollar.

same time, other demands were made of the Colony's finances particularly loans to Pahang. By the end of 1890 the Straits Settlements had, already, loans outstanding to Sungai Ujong and Negri Sembilan amounting to £199,000 and £180,897 respectively and to Pahang a sum of £372,800.¹⁸ It reluctantly agreed to grant a further sum during the next two years of £200,000 and made an additional loan of £100,000 in 1892.¹⁹

The Military Contribution and loans to the Malay States combined in the recession, so it was generally believed in the Colony, to retard the development of the Straits Settlements. Dissatisfaction was expressed in several quarters. Penang's longstanding resentment of Singapore's power and prosperity boiled over once again in the press and in the Legislative Council where demands were made for a 'fairer' share in the distribution of revenue and a greater voice in the decisions of government. Agitation reached its climax in early 1893 with an appeal to the Secretary of State for an investigation of Penang's problems by a Royal Commission.²⁰ Singapore was the centre

18. Sungai Ujong AR, 1890, Appendix B; Negri Sembilan AR, 1890, Appendix F., and Pahang AR, 1890, p.1

19. Smith to Sec. State, 24/25 Mar. 1892, CO 273/179.

20. For two views on the Penang case see F.M. McLarty, Affairs of the Colony: history of the Straits Settlements and British Protected States of the Malay Peninsula, (Penang, 1893) and A. Huttenbach, Critique on what ought to have been the main point of Mr. McLarty's book, 'Affairs of the Colony, (Penang, 1893). Request for the Royal Commission is to be found in SSLC, 23 Feb. 1893, and Smith to Sec. State 11 March 1893 and the Secretary of State's in Sec. State to Smith 19 Aug. 1893 in CO 273/196.

of opposition to the Military Contribution. Under the vigorous leadership, Europeans and Chinese - with the private support of government officials - sought to have the Colony's contribution reduced. Hostility lessened somewhat in 1893 when the Gladstone government agreed to reduce the sum to £80,000, but was revived in 1895 when it was again raised and culminated in the resignation of the Singapore members of the Legislative Council the Justices of the Peace and the members of the Chinese Advisory Board.²¹ This difficult period also fermented discontent among those with investments in the Malay States; it was thought by some that mal-administration threatened the security of their investments. A civil case heard originally in the Selangor Residency Court became the cause célèbre for these persons who sought to reform Resident rule.

It concerned the Rawang Tin Mining Company Limited which operated in Selangor but had its headquarters in Singapore.²² The company, owing about 1500 labourers about £50,000 in wages, borrowed half that sum from the Chartered Bank of India, Australia and China and distributed its employees and then declared itself insolvent. The

21. See Mitchell's open and confidential dispatches of 10 Jan. 1895, CO 273/202.

22. This company was apparently owned by the Jardine, Matheson and Company and was managed by the agency of Messrs. Scott and Company (Wong Lin Ken, 'Western Enterprise and the Development of the Malayan Tin Industry to 1914,' op cit., p. 137.

Residency Court appointed the Bank as liquidator which in turn undertook to make good the labourer's wages.²³ The Singapore shareholders were so annoyed by this decision that they attempted to gain redress in the Colony's Court of Appeal. The Attorney General (J.W. Bonser) pleading for the defendants, described the Malay States Courts as 'semi-barbarious' and undeserving of recognition.²⁴ Although the company failed to secure compensation, Arnot Reid, editor of the Straits Times, and A.L. Donaldson, a leading lawyer launched a vigorous campaign for reform of the judicial system of the Malay States.²⁵ In 1891 a joint petition was submitted to the Secretary of State by the Singapore Chamber of Commerce and Singapore Branch of the Straits Settlements Association requesting a right of appeal for British subjects in criminal and civil cases to the Colony's Supreme Court from Malay States Courts. The petitioners argued that only in this way could capital be safely invested in the States.²⁶ Although this petition limited itself to a criticism of the courts in the Malay States, opinion was gaining support in the Straits Settlements that

23. Fairfield minute, 12 Dec. 1891, in Smith to Sec. State, 3 Nov. 1891, CO 273/176.

24. 'The Rawang Tin Mining Co. Ltd. ex parte the Chartered Bank of India Australia and China,' 3 Mar. 1890, SLJ, Vol.III, No. 27, Aug. 1890, p. 27.

25. Smith to Bramston, Private letter, 3 Nov. 1891 in Smith to Sec. State 3 Nov. 1891., CO 273/176.

26. Petition to Sec. State by Singapore Chambers of Commerce and Singapore Branch of the Straits Settlements Association, 27 Oct. 1891, in Ibid.; Penang Gazette, 29 Apr. 1891. 'Native States Law,' SLJ, Vol.V, No.3, (New Series) Sept. 1891, p. 12.

annexation of the Malay States would best secure the interests of the Colony. Certainly the petition for judicial reform appears to have been inspired by this idea.²⁷ Annexation was attractive for several reasons. It would, so it was argued, solve Penang's problems, the Settlement becoming the principal port serving Perak with a railhead at Prai in Province Wellesley opposite George Town.²⁸ It was also seen as an excellent device for relieving the Colony of some of the burden of the Military Contribution. After all, the Malay States owed their protection to the Straits Settlements and it was only fair that they should share in meeting the cost. Moreover, it would mean that the Colony's judicial and administrative systems would be extended to the Malay States and, according to this view, lead to further development of the Malay States.²⁹ Against this background, Pahang's insolvency was bound to become a critical point in the relationship between the Colony and the Malay States. In an

27. See Singapore Free Press, 28 Oct. 1891 and Straits Times, 28 Oct. 1891.

28. See Straits Budget, 3 Oct. 1893, and Penang Gazette, 21 Nov. 1893, for a Chinese petition to the Secretary of State.

29. For the call of the 'consolidation' of the Colony and Malay States see the Penang Gazette's view quoted in the Straits Times, 18 Dec. 1894. Thomas Shelford in the Colony's Legislative Council thought closer ties between the protected States and Straits Settlements would solve the latter's problems; 'I should like to know whether our Judges cannot be of some use beyond the limits of our Colony, and our financial officers of more use in supervising the Native States.' (SSLC, 23 Feb. 1893.) Swettenham's early recognition of this view is reflected in the Perak AR, 1890, FGG, 1891, p. 478.

attempt to relieve some of the pressure upon the Colony's finances, Sir Cecil Clementi Smith in 1891, proposed to the Colonial Office that further loans to Pahang might be made by Perak and Selangor. This was found to be unacceptable. Instead the Secretary of State ordered that the two prosperous West Coast States should assume the responsibility equally for the debts of Sungai Ujong and Negri Sembilan owed to the Straits Settlements. The Colony (which the Colonial Office thought was largely responsible for hastening the introduction of Resident rule in Pahang) was instructed for the time being to extend further credit facilities to Pahang.³⁰ However, when the Legislative Council was compelled to grant an additional sum of £100,000 to Pahang in March 1892, the whole question of the future administration in the Malay Peninsula came to a head.³¹ The policy which was eventually adopted led to the creation of the Federation of Perak, Selangor, Negri Sembilan and Pahang.

ii

Although the protracted consideration of this question in the Colonial Office became involved in a number of related issues,

30. Sec. State to Smith, 13 Nov. 1891 and confidential 13 Nov. 1891. in Smith to Sec. State, 21 Aug. 1891, CO 273/174.

31. Smith to Sec. State, 25 Mar. 1892, CO 273/179.

fundamentally the debate on various proposals for combining the protected States centered on whether or not Pahang could ultimately become part of the economic order of the West Coast. If it could, deficit financing of Resident rule would be justified; if not, then complete withdrawal or at least a retreat to the preservation of British interests under the consular agent of Weld's treaty of 1887, would be the only alternative.³² An extended dialogue for the most part between C.P. Lucas, then head of the Eastern department and Edward Fairfield, then Assistant Under-Secretary, over the merit of these alternatives centered largely upon the existence and the extent of Pahang's mineral wealth. So far as Lucas was concerned, there were two 'undoubted facts';³³ Pahang was a mineral rich country and therefore linking it by rail and road to the west would bring it 'within the Chinese zone':³⁴ development would follow, and the country would soon yield a 'very large return'.³⁵ Clementi Smith, supported by Swettenham (Resident of Perak) and Lister (Resident of Negri Sembilan), believed that Pahang possessed great mineral wealth

32. Fairfield minute, 7 May 1892, in (Tel.) Smith to Sec. State, 7 May, 1892, CO 273/180. For detail discussion of the Colonial Office comments on the problem, see Thio, 'British Policy in the Malay Peninsula, 1880-1909,' Chapter IV.

33. Lucas minute, 7 May 1892, in Smith to Sec. State, 25 Mar. 1892, CO 273/179.

34. Lucas minute in Smith to Sec. State, 30 Sept. 1892, CO 273/183.

35. Lucas minute, 7 May 1892, Ibid.

and was capable of 'great capacity.'³⁶ For him the 'crux' to Pahang's development lay in the construction of a railway line to the western States. A link was essential to transport Chinese labour into the State and to remove tin and gold.³⁷

Edward Fairfield questioned the soundness of investing considerable sums of money in a State of no proven wealth. He was supported in this view by Maxwell (Resident of Selangor) and F. Dickson (Colonial Secretary).³⁸ Nevertheless, Fairfield did not differ from Lucas in his basic approach to the problem. He was certainly more cautious, but he was prepared to retain the Residential System if it could be shown that there was sufficient mineral wealth to eventually support an expensive establishment and heavy outlay in public works. Indeed, he approved the suggestion of the Resident of Pahang that Raub, which was close to the Selangor border and the only district of proven wealth in Pahang, should be annexed to Selangor, while the rest of the country, if complete withdrawal was rejected, should be returned to the Sultan and chiefs to be administered as before 1888 with a British Resident exercising limited authority.³⁹ The Governor, however, rejected

36. Smith to Fairfield, Private letter, 6 Sept. 1892, CO 273/183.

37. Ibid.

38. Fairfield minute, 27 Oct. 1892, in Smith to Sec. State, 18 Aug. 1892, CO 273/182.

39. Lucas minute, 7 May 1892 in Smith to Sec. State, 25 Mar. 1892, CO 273/179 and Fairfield's confidential letter to Smith, 27 July 1892, in Smith to Sec. State, (Tel.) 20 Aug. 1892, CO 273/182.

this suggestion as unworkable for geographical factors and undesirable for political reasons. Instead, he again urged the construction of a railway from Selangor to Pahang to be built by loans from the Colony - loans which could only be made if the Military Contribution was reduced.⁴⁰

The impossibility of persuading the Treasury to reduce the Straits Settlements' Military Contribution lead the Colonial Office officials to seek an alternative financial scheme for Pahang. Lucas minuting on the question, revived Clementi Smith's earlier suggestion that the other Malay States might 'fairly' be called upon to assist in what could be 'regarded as in a sense one of common interest for the Malay States.'⁴¹ He thought the wealth of Perak and Selangor might be employed to support the economic development of Pahang under Resident rule. This idea had earlier been rejected by Fairfield, but was revived as a result of discussions between Lucas and Sir Hugh Low, now in retirement, and Frank Swettenham who was home on leave. Commenting on a memorandum by Swettenham, in which the Resident of Perak presented an optimistic picture of how Pahang might 'pay as well as any other Malay State,' Lucas pointed out that in the 1880's a federation of Malay States under Low had been proposed.⁴² Low now thought that

40. Smith to Fairfield, Private letter, 6 Sept. 1892, CO 273/183, and Smith to Sec. State 30 Sept. 1892, CO 273/183. See also Lucas minute, Ibid.

41. Swettenham memo, Nov. 1892, CO 273/185.

42. Lucas minute, 24 Nov. 1892, in Ibid. The earliest mention of such a scheme was rumoured in 1880 (Singapore Daily Times, 31 Jan. 1880.)

Pahang 'ought to be attached to and be financed by the Western Native States.' Low apparently believed that there was a 'community of feeling' between the States and that they would 'readily help each other's countries'; he suggested that this assistance could be given within the political framework of a 'general federation.' Lucas appears to have dropped this idea for the moment, for he believed the existing system to be working 'too well to be changed.'⁴³

It was Swettenham, however, who raised the proposal of linking, on an administrative basis, the Malay States. There is no evidence to indicate whether or not he had known of the earlier proposals, but as Low's successor in Perak he probably had heard of the scheme, or he may well have heard of the proposal in 1887 when on leave in England. Nevertheless, soon after he assumed the Residency of Perak in 1889, he drafted a memorandum entitled, 'Suggestions for the future administration of the Malay States,'⁴⁴ proposing that Sungai Ujong and Jelebu should be combined with Selangor and that Perak and Selangor

43. Ibid. The papers on this proposal were apparently missing in 1892, however, both Lucas and Fairfield make mention of it. Fairfield said that Low planned to live in Johore (Fairfield minute 29 Apr. 1893, Smith to Sec. of State, 29 Nov. 1892, CO 273/183). Lucas in his minute of 24 Nov. reporting Low's views on Pahang, wrote of Sir Hugh being made, under that scheme, a 'Resident General'. This appears to be the first mention of the term. (Swettenham Memo. Nov. 1892, CO 273/185.)

44. This memorandum is to be found as Item 67 in the Swettenham Papers. The date on the cover is 1889. It was found in the Perak Secretariat.

be placed under a 'Chief Resident,' who would submit to the Governor matters of general policy, annual estimates of revenue and expenditure, and annual reports. But in all matters the 'Chief Resident' would be responsible for the administration of the States which he would carry off through two Residents. In this way, the chief Resident would relieve the Governor and Colonial Secretary of much business connected with the Malay States; he would provide a uniformity in the administration of the two States, particularly in legislation and administering of justice; and he would also see that surpluses of revenue were used 'to open up valuable country in another State.'⁴⁵

But no mention was made of Pahang which only recently had had a Resident imposed upon it; in 1889 it was only just becoming a financial liability. Nevertheless, the essential idea of unity and efficiency in administration, and the combining of the revenues of these States for furthering the economic development, had been committed to paper.

There were other proposals for rationalizing the administration of the Malay States, but these were limited to one of two States. Weld proposed in 1887 that upon Paul's retirement, Sungai Ujong with Jelebu and the Negri Sembilan should be combined under one Resident residing at Kuala Pilah. He believed that such an arrangement would be the best way to secure economic and efficient administration in these States.⁴⁶ Sir Frederick Dickson made the same proposal to the

45. Swettenham, F.A. 'Suggestions for future administration of Malay States', 1889, in Swettenham Papers, Item 67.

46. Weld to Sec. State, 11 Oct. 1887, CO 273/148.

Colonial Office in 1890 and although he submitted no proposals to the Secretary of State, apparently looked forward to a union of all protected Malay States under one resident British Officer.⁴⁷ Clementi Smith, at the time (1892) when the Colonial Office was taking up the question of future administration of the Malay States, recommended joining Sungai Ujong and Jelebu to Selangor which had recently assumed responsibility for the former's debt.⁴⁸ But it was Swettenham who actively promoted the idea of a wider combination of the Malay States with the Colonial Office. During his leave in 1892, Swettenham developed his ideas further in discussion with Lucas, and through him they emerged in a memorandum written by Lucas in March or April 1893. The proposals in this memorandum were approved by Buxton, the Parliamentary Under-Secretary, and enclosed in Lord Ripon's despatch of the 19th of May, 1893.⁵⁰ In the meantime, Swettenham, who had returned to Malaya at the end of 1892, also drafted a memorandum which he claims he forwarded to Sir Cecil Clementi Smith in February.⁵¹

47. Dickson to Sec. State, 23 Aug. 1890, CO 273/167. E.W. Birch records Dickson's larger plan and his hope to become that Resident officer in his unpublished "Reminiscences", written in 1921, (E.W. Birch papers).

48. Smith to Sec. State, 28 Nov. 1892, CO 273/183.

49. Evidence that Swettenham had talks with Lucas appears in Lucas minute 24 Nov. 1892 in Swettenham Memo, Nov. 1892, CO 273/185. Lucas writing in 1906 had 'little or no doubt that you had spoken or written to me on the subject.' (Lucas to Swettenham, 1 Nov. 1906, Swettenham Papers.) See also Appendix VII.

50. The despatch and memorandum were written by Lucas 'after speaking to Mr. Buxton'. It was dated 27 Apr. 1893. (Unsigned marginal notes, but in Lucas handwriting, in Smith to Sec. State, 29 Nov. 1892, CO 273/183). However, R.E. Stubbs, writing to Swettenham in 1906 and enclosing a copy of the 'memo' says it was dated March, 1893. (Stubbs to Swettenham, 2 Nov. 1906, Swettenham Papers, Item 22.)

51. *Swettenham Papers*, ^{memo} 25 Jan. 1893, *Swettenham Papers*, Item 14.

As the proposals in these two memoranda shaped the scheme finally adopted, it is worthwhile considering them in some detail. Swettenham's approach to the subject of the future of the Malay States was essentially that of an administrator. The central recommendation, as it had been in 1889, was the creation of a post of 'Resident General.'⁵² Although he then described in some detail the functions of the office, nowhere did he explicitly consider the structural implications of such an office. Contrary to his claim that the memorandum suggested 'in considerable detail and for specific reasons, the federation of the five Malay States,'⁵³ the word 'federation' does not appear. Only once does a descriptive word intrude to suggest the structural foundation for linking these States together. The word was 'union'.⁵⁴ Further on, he declared that the 'administrative establishment' of Perak, Selangor and Pahang would be maintained 'as at present' while Sungai Ujong might be more economically administered by 'attaching' it, and also, perhaps, Negri Sembilan, to Selangor, or combining it and Negri Sembilan under one Resident. At no time, however, did Swettenham suggest the formal basis of this association.

52. Swettenham Memo, 25 Jan. 1893, Swettenham Papers, Item 14.

53. Swettenham, British Malaya, Appendix, p. 363.

54. A short time after Clementi Smith had replied to the Secretary of State's despatch in which he set down his views about confederation, Swettenham published five articles in the Straits Times between 28 August and 11 September 1893 which were brought out as a book entitled About Perak in September 1893 where he described the combination of these States as a "federation".

As in 1889, he urged the appointment of a senior official to reside in the Malay States. He argued that the States' administration had grown enormously since 1874, and that they had come to demand a large portion of the Governor's time. The size and scope of the problems reduced in practice the Governor's actual control of the individual administrations. Increasingly, Residents were being given a free hand in determining the course of policy.⁵⁵ While control was difficult for a Governor of Smith's wide experience in Malaya, it would be less effective for Governors, or colonial secretaries, with little or no knowledge of the area. Indeed, the Resident's formal position and his local knowledge could bring him into direct conflict with the Governor on matters of policy. In Swettenham's opinion, the only way to overcome these difficulties was to appoint an officer to reside in the Malay States. He should be called the Resident General and communicate directly with the Governor, and not through the Colonial Secretary.

The great merit in the proposal was that it would provide 'uniformity and continuity of policy,' which would be effected by occasional meetings between the Residents and the Resident General. He proposed the immediate creation of a Sikh police force, a chief railway engineer, and a single postal and telegraphs department; the establishment of a single civil service, the publication of one set

55. The notion of Resident rule foundering an arbitrary personal rule by British Officers is more fully developed in About Perak, p.19.

of general orders for all states, and the formation of a 'Bench of Judges'. There should be one land code, one education policy, as well as central control of legislation. Finally, what he called the 'most important point of all' there should be a 'Joint Purse.' By this term he did not envisage one central treasury for all states, but rather a policy whereby 'one State should be prepared to lend to another, at fair interests, for useful works and even for ordinary purposes of administration'.⁵⁶ Swettenham thought that in this proposal lay the means for financing the administration and development of Pahang.

Lucas raised most of these points, as well as others, in his memorandum.⁵⁷ He argued also the value of combining the public works department, defence and civil service, and he proposed the creation of one supreme court for all five States. Likewise as in his previous minutes, he raised the idea of a 'common purse' as the best means of financing Pahang. The combined revenues of Selangor and Perak could then be utilised to finance the roads and railways in Pahang as well as those in Negri Sembilan and Sungai Ujong, but spoke of a single treasury which would enhance the borrowing power of the combined States. As for the rest of his proposals, Lucas approached the subject somewhat differently from Swettenham. The Resident of Perak presented his scheme as an administrative readjustment; Lucas on the other hand,

56. Swettenham Memo, 25 Jan. 1893. Swettenham Papers, Item 14.

57. See footnote 50. Memorandum enclosed in Sec. State to Smith, 19 May 1893, in Smith to Sec. State, 29 Nov. 1892, CO 273/183.

tended to see the matter as a structural device for achieving administrative uniformity. Noting that Perak and Selangor had gradually been drawn into Pahang affairs - supplementing the colony's loans and supplying the police force during the 1891-1892 uprising.- he pointed out that there was no formal 'bond of union' between the States. While each Resident was subordinate to the Governor each State was independent of the other. Some combination of these States was desirable for it would lend to 'Greater uniformity in Administration' and result in 'greater efficiency and economy.' Moreover, he added, a 'union or federation would afford an obvious and reasonable justification for a policy by which the stronger States may at the outset help the weaker, and those which are more prosperous, for a time subsidise the less development.'⁵⁸ However, he stipulated that two principles should govern the creation of any union or federation of these States; the governor's authority had to remain 'unimpaired' and it must not 'be uncongenial to or unduly wound the susceptibilities' of the Malays. Moreover, he rejected entirely the possibility of annexation. It would be thought not only raise 'the suspicion of bad faith' but would also lead to the dismantling of the successful system of administration.⁵⁹ He further warned against interfering in the 'purely domestic matters' in the individual States.

58. Ibid.

59. This argument was also used by Swettenham in About Perak, p.76.

Pointing to the success of the 1889 Negri Sembilan Confederation, he recommended that article three of that agreement should be included in any treaty, that was proposed.⁶⁰ He also suggested the formation of a council of rulers and Residents, which would transmit its decisions through the Resident General to the Governor.

In sustaining the Governor's control of the proposed Federation, Lucas argued, as Swettenham had done, that this control might be made more effective by the creation of the post of Resident General. Stationed in the Malay States, he would be the 'Chief British Officer,' but 'directly subordinate and directly responsible,'⁶¹ to the Governor. Moreover, the Governor would become the 'High Commissioner,' a title he already held in Borneo, in order that there would be 'no divergence of policy in the Straits Settlements and Malay States.' In the wider political sense, Lucas envisaged the Governor at Singapore as the focal point of political and administrative control in the Peninsula and Borneo. Indeed, he wrote,

60. The relevant portion of this article reads as follows: 'It is to be understood that such arrangement as is now agreed upon does not imply that anyone Ruler should exercise any other power or authority in respect of any State than that which he now possesses.' (Maxwell and Gibson, Treaties, p. 63.) This recommendation suggests Clementi Smith's influence as he had drafted this treaty. It should also be added that Smith was also opposed to a whole-sale adoption of crown colony forms of government which he believed the Malays would dislike. (Smith to Sec. State, 28 Oct. 1891, CO 273/176.)

61. Memorandum enclosed in Sec. State, to Smith, 19 May 1893, Ibid.

it would seem that the prospect of a uniform British policy in the Malay Indies, including Borneo as well as the Malay Peninsula, will most be furthered in future years, as communication both by land and by sea become quicker and more constant, by entrusting the governor at the central point of Singapore with powers of general supervision and control. 62

What Lucas was to call later that 'instinct for constructiveness' in British rule, of promoting large political units, revealed itself in his approach to Malayan problems.⁶³ For instance in 1896 he was to suggest a Resident-General-Resident formula for British Borneo.⁶⁴ He was also closely connected with the extension of British influence in the northern Malay States.⁶⁵ It is understandable, therefore, that he should have urged the retention for a Resident in Pahang as 'recognition' of the extent of British power in the Peninsula. And as for the protected Malay States, he considered that ultimately the 'force of circumstances' would compel them to 'coalesce.'⁶⁶ Whether in the first instance there would be a Federation of Selangor, Sungai Ujong, with Jelebu and Negri Sembilan, or one including those States as well as Perak and Pahang, Lucas believed that they should all 'be

62. Ibid.

63. C.F. Lucas, Greater Rome and Greater Britain. (Oxford, 1912,) p.163.

64. See Lucas minute, 18 May 1896 in St. J. Hughes to Sec. State, 14 May 1895, CO 144/70.

65. See Chapter VIII, p.

66. Lucas minute , 14 Nov. in Smith to Sec. State, 30 Sept. 1892, CO 273/183.

gradually federated and possibly eventually united.' If not immediately, then the end in sight should certainly be a 'single Malay State,' or, at least, 'one system of administration and a common purse.'⁶⁷

Economy, efficiency and uniform administration are recurring themes among the advocates of reforms in the administration of the Malay States. Frequently, Lucas used the phrase 'union or federation' without distinguishing between the two, but always meaning the progressive achievement of a unity system of government. Schemes for a federal government were never discussed; only suggestions for combining the different administrations under a central authority which would secure identical or uniform government in the constituent States were considered. Professor Livingston's view that the Colonial Office exerted its influence for unitary forms of government appears to be born out in the case of this ~~f~~ederation. Where federal government was established in the colonies such as in Canada and Australia, they were promoted from within the colony and usually in opposition to the preferred view of the Colonial Office.⁶⁸ Neither

67. Ibid.

68. William S. Livingston, Federalism in the Commonwealth, London 1963, p.xi. In this connection note that the proposals for consolidating the administrations in the West Indies in order to secure greater 'efficiency and economy' that the terms 'federation' and 'union' were used without distinction in the Colonial Office. (Bruce Hamilton, Barbados and the Confederation Question, 1871-1885, (London, 1956), pp. 23-4.)

the various proposals for an imperial federation raised in England nor the adoption of federal systems by some colonies in the nineteenth century should be allowed to suggest that the Colonial Office was anxious to promote this kind of government.⁶⁹ Hence, in the case of the Malay States, what was wanted by the Colonial Office was a unitary system of government; if this could be achieved through a 'federation', then such a scheme would have its approval. In Lucas' view, therefore, the preservation of the State administrations regardless of the form of government adopted was to be transitional.

Lucas's memorandum was sent out to the governor in the Secretary of State's despatch of 19 May 1893, and was received by the Governor towards the middle of the following month. Modifying a memorandum which he had drafted earlier in the year, Clementi Smith replied to the Secretary of State on the 30 June and when he returned to London he discussed the scheme in meetings with his successor, Sir Charles Mitchell, and members of the Colonial Office. A period of fifteen months lapsed during which Mitchell took up his new appointment in Malaya where he gave the proposals further investigation.⁷⁰ On 1 May 1895, he reported his findings and recommendations for implementing the scheme to the Colonial Office.⁷¹

69. For a discussion of these movements see J.E. Tyler, The struggle for Imperial Unity, (1868-1895), (London, 1938).

70. It was Swettenham's opinion that this delay was caused by Maxwell's presence in Singapore as Colonial Secretary. (Swettenham to E.W. Birch, 28 Oct. (1906), E.W. Birch Papers.)

71. Mitchell to Sec. State, 1 May 1895, CO 273/203.

Smith's despatch was remarkably similar to the memoranda of Swettenham and Lucas, so much so indeed, that Lucas found it necessary to say that there had been no 'friendly collusion.'⁷² Clementi Smith chose to describe the union as a 'Confederation' which he likened to his 1889 Negri Sembilan Confederation; but he presented no new arguments and added no new ideas to the Colonial Office proposals. Mitchell's despatch, and in particular his enclosures, became the basis for the Treaty of Federation signed in 1895 and the administrative

72. Lucas minute, 16 Aug. 1893 in Smith to Sec. State, 30 June 1893, CO 273/188.

Swettenham claimed in his first edition of British Malaya to have 'drawn up a scheme for the federation' (p. 272) which was submitted to the Governor and thence to the Secretary of State. This provoked an immediate response from Sir Cecil Clementi Smith and led to an extended correspondence between the two men. When Swettenham left his version unaltered in the second edition, Clementi Smith published for private circulation a pamphlet challenging this and other points in the book. (Notes on some of the Statements in Sir Frank Swettenham's book 'British Malaya', (London, 1909.)) Only in the 1920 edition did Swettenham offer a reply and this in the form of an appendix. He was unable to locate his original memorandum until after Clementi Smith's death but, if it is genuine, as it appears to be, then it would seem to have preceeded the drafting of Clementi Smith's despatch by almost five months. Clementi Smith denied that he ever saw Swettenham's memorandum, but the latter in setting out his explanation for the similarity of Smith's proposals and his own felt that the Governor had read his memorandum, but that during the rush to wind up his affairs before retiring in 1893 Clementi Smith had forgotten it when he came to prepare his own recommendations. Unconsciously he may have incorporated many of Swettenham's ideas, but it must be noted that the two men discussed their respective plans, the last occasion being in May 1893 while Clementi Smith was limited in his reply by ~~1 page~~ ^{proposals} in the Secretary of State's proposals. (The relevant memoranda and correspondence may be located in the Swettenham Papers).

scheme introduced in the Malay States in 1896.⁷³

The central feature of the scheme, as outlined in the memorandum drafted by Swettenham and entitled 'A Proposal for the Administrative Federation of the Protected Native States,' was the appointment of a Resident General, who was to reside in Kuala Lumpur and have general direction and control of the administration.⁷⁴ He was to be empowered to issue instructions to all Residents, but to the State officials only through the Residents. The Residents were to communicate with the Governor through the Resident General rather than formally through the Colonial Secretary. The Resident's powers were to be circumscribed in matters concerning personnel and expenditure by those of the Resident General's. For instance, the Resident was not to be permitted to exceed expenditure of the annual estimate by more than \$500 or transfer votes without the Resident General's permission. Similarly, staff appointments and promotions, when the annual salary exceeded \$600 or when paid from open votes exceeding \$1200, and dismissals when the salary exceeded \$300, was to be referred to the Resident General. Also, all staff matters affecting Malays, which were to be submitted to the

73. Mitchell's despatch and enclosures, 'A Proposal for the Administrative Federation of the Protected Malay States', in Mitchell to Sec. State, 1 May 1895, CO 273/203.

74. In its published form the title was 'Scheme for the Administrative Federation of the Protected Native States,' and hereafter will be called the Scheme. It was published as SSLC Paper No.4 of 1896, 'Correspondence respecting the Federation of Protected Native States,' p. C 91.

State Council, were to be sanctioned by the Resident General as well as the Governor. Some twelve new departments were envisaged under the scheme, each to be under a 'chief officer.' While these officers would take their instructions directly from the Resident General, they were explicitly excluded from issuing instructions to their departments within any state which were 'opposed to the ruling of the local Residents.' If differences arose between chief officers and Residents, the case would be referred for a decision to the Resident General and, if necessary, to the Governor.

The legislative procedure was also to be altered. Proposed legislation required the approval of the Resident General and the Governor before being enacted. However, each State Council was to retain its separate identity, and the laws were to be, as before, those of the Sultan-in-council. The annual meeting of all the rulers in a single Council, proposed by Lucas and Swettenham, was to consist, in addition to the rulers, of the Residents, the members of the State Councils, the Resident General, and the Governor as President. It was not to possess any legislative authority but was to be 'held only for the purpose of bringing the heads of the various states together and discussing matters of mutual interests.'⁷⁵ The memorandum outlined other important matters: the formation of a single civil service and the reorganisation of the principal departments of government under a

75. The Scheme, paragraph 21.

single officer. One short paragraph describes the relationship between the States and the financial structure of the scheme. It declared that:

Each state will maintain its existing autonomy as regards every other state, and will collect and, after providing for federal charges as herein after specified, spend its own revenue. If assisted by another state all money advances will be classed as loans to be repaid in accordance with terms of mutual arrangement. 76

Although this memorandum was not a part of the political instrument which brought federation into force, and could not be said to have the force of law, it was acted upon and therefore might be described as the informal constitution for the new ~~f~~ederation. It was hardly a precise document. It did not indicate for instance whether the chief officers, were to have executive powers or to possess only advisory authority.

As several commentators and officials were later to describe the administration which developed under the Treaty of Federation as 'federal government,' it is important to consider whether or not these proposals contain the principles of federal government. If Professor Wheare's classic definition of federal government - that there is a division of powers 'so that the general and regional governments are each, within a sphere, co-ordinate and independent' - is to be the criteria by which the Scheme may be judged then the kind of government outlined in it could not be prescribed as federal.⁷⁷ Although the

76. Ibid., paragraph 2.

77. Wheare, K.C., Federal Government, (3rd Ed., London, 1956), p.11.

Scheme declared that 'each State will maintain its existing autonomy as regards every other state,' there was no such restraint placed upon the 'Federal government.' Moreover, there was no clear or even general description of what was to be State and Federal legislative subjects. The Resident General could issue instructions directly to a Resident or any other state department without restraint, and a Resident could, until instructed otherwise, take executive action to prevent federal department heads from issuing instructions to State departmental officers. In other words, the central and state governments would be able to interfere and encroach upon the powers of each other's government. There was no division of authority and, therefore, no adherence to the essential principles of federal government.

From the minutes on the Scheme, it is clear that Lucas at least understood that its provisions would eventually lead to the growth of a single administrative system. While warning against too rapid a unification of the States, he thought that in time, as vacancies occurred, there would be a 'Resident in Chief and possibly not more than three Assistant Residents' and, 'without offending native prejudice', the States could be brought to 'the level of districts of the same State.'⁷⁸

Swettenham, although he did not attempt to forecast the future development of these administrative reforms, wrote of the Scheme as the

78. Memo by Lucas, 8 Nov. 1895, in Mitchell to Sec. State, 1 May 1895, CO 273/203.

only possible proposal.⁷⁹ Mitchell described the Resident General's function as the 'centralizing power.'⁸⁰ Although Lucas thought it would be unnecessary for the Resident General to interfere in 'purely local matters,' his opportunity under the Scheme for direct control of every detail of each administration, for unifying the principal departments of government and for the creating of a unitary government in the Malay States was very considerable. The Governor could exercise control over the Resident General, but, as the purpose of establishing his office was to secure closer central control of the details of administration thereby relieving the Governor of much of this work, it was unlikely that the Governor's control was intended to be any more than a general one. Indeed, Swettenham even attempted to free himself of the Governor's control, an idea Lucas cautiously supported, but which was quickly quashed by his superiors.⁸¹

iii

In view of what was expected of Federation and of what was proposed in the administrative scheme, it is interesting to turn to the Treaty.

79. Confidential memorandum by Swettenham, 1 Dec. 1894, Swettenham Papers, Item 68.

80. Mitchell to Sec. State, 1 May 1895, CO 273/203.

81. Lucas minute, 9 Mar. 1896 in Mitchell to Sec. State, 23 Jan. 1896, CO 273/212; Swettenham to Sec. State, 7 Dec. 1902, CO 273/284.

Except for the alteration of one word, the draft sent to the Colonial Office was approved immediately and without comment.⁸² In July 1895, Swettenham toured the Malay States and secured the signatures of the Sultan of Perak, Selangor, and Pahang, and of the Yam Tuan Besar of Sri Menanti, of the four Undang of Sungai Ujong, Johol, Jelebu, Rembau and the ruler of Tampin.⁸³ The Treaty contained six articles. The first three were modelled closely on the 1889 Agreement between Britain and Negri Sembilan.⁸⁴ By these articles the several rulers agreed to place their States under 'the protection of the British Government,' and to 'constitute their countries a Federation' of 'Protected Malay States' which were to be administered 'under the advice of the British Government.' Article three was taken almost verbatim from article three of the Negri Sembilan Agreement and stated that the contents of the Agreement did 'not imply that any one Ruler or Chief shall exercise any power or authority' over any other State. The fourth article was derived from article six of the Pangkor Engagement, and provided for the appointment of a 'Resident General' as the 'agent and representative' of the British Government who was to be directly responsible to the Governor. Accommodation and salary were to be provided

82. Sec. State to Mitchell, 27 Dec. 1895, in Mitchell to Sec. State, 1 May, 1895, CO 273/203.

83. Mitchell to Sec. State 7 Aug. 1895, CO 273/205.

84. Mitchell to Sec. State, 1 May 1895, CO 273/203.

by the rulers who agreed to follow his advice 'in all matters of administration other than those touching the Muhammadan religion.' The fifth article made provision for one State to lead 'assistance in men, money or other respects' as the Resident General 'may advise' and provide, upon 'the requisition of the Governor,' troops for the defence of the Straits Settlements. The final article stated that:

Nothing in this Agreement is intended to curtail any of the powers or authority now held by any of the above-named Rulers in their respective States, nor does it alter the relations now existing between any of the States named and the British Empire.

As Swettenham drafted the Treaty, it is worth observing his description of it.⁸⁵ Writing in 1906, he said:

The Treaty of Federation was a very short document and what it did was to make the States one for all general purposes of administration; but, in agreeing to the appointment of a Resident General, it was for the first time plainly stated that he should have executive control, under the direction of the Governor of the Straits Settlements, who would in future be also styled High Commissioner for the Federated Malay States. ⁸⁶

Neither the title of High Commissioner nor the name 'Federated Malay States' appears in the Treaty. A far more important claim, one repeated in other places - the grant of executive control - was never admitted in the Treaty.⁸⁷ Although he was prepared to write in 1893 that the

85. Swettenham, Footprints in Malaya, p. 107.

86. Swettenham, British Malaya, p. 273.

87. Swettenham, persisted in this view that control was formally extended to the Resident General. See his letters to the Secretary of State 3 June and 19 September 1910, CO 273/368. In 1925 he claimed that for 'the first time' the 'control instead of the advice' of British officers was 'recognised.' (Malay Mail, 31 Oct. 1925.)

Residents 'carried on administration,'⁸⁸ in this Treaty Swettenham preferred to propagate the fiction that British officers continued to administer by advice. The Treaty, therefore, neither altered the powers of the Residents, in relation to the Sultans, nor gave the Resident General executive control of the separate States. Moreover, while it proclaimed to have formed a 'federation' it failed to create a federal system of government. The Resident General's functions and powers were nowhere defined or explained. No central government was created or even suggested. The relationship between the Resident General and the Residents was undefined. More important, however, there was no declaration of the principles of federal government and no division of powers between the States and the central government. Finally, as it is the cardinal principle of federal government that the constituent parts must relinquish some powers to the central government and in view of the last article of the Treaty of Federation, it must be assumed that the treaty was not intended to create a federal government. The use of the word 'Federation', so far as it describes the kind of government suggested in the Treaty, was misleading.

It is possible that Swettenham simply made a bad job of drafting the treaty and may have had little idea of the principles of federal government. Indeed, he maintained, many years later, that a system of

88. Swettenham, About Perak, p. 14.

federal government had been secured by this Treaty. Replying to criticism of the treaty in 1932, he quoted a dictionary definition of federation as 'the act of uniting in a league' and 'Federal' as 'founded upon mutual agreement; a union or government in which several states, while independent in home affairs, combine for national or general purposes.' This was, he felt, a 'correct' definition of what was 'intended by the federation of the Malay States.'⁸⁹ It could be shown that elements of these definitions were contained in the Treaty and much more fully in the Scheme. The four States were undoubtedly united in something called a 'Federation', and the Scheme and Treaty appeared to preserve the authority of the State governments in local matters. But from Swettenham's writing on this subject, it would seem necessary to consider these two documents separately. The Treaty was designed to preserve the integrity of the sultanates, and the Scheme was intended to provide the basis for central and uniform control of the State administrations. Swettenham would argue that taken together the two fulfilled the conditions usually associated with federal government.⁹⁰

Nevertheless, the two questions must be asked, why were there two separate documents and why was only one signed? When the Treaty is set

89. F.A. Swettenham, 'The Legal Status of the Malay State. A critical analysis of Mr. Roland Braddell's Pamphlet.' British Malaya, (Jan. 1932), p. 244.

90. See Ibid; Swettenham, 'Malay Problems,' British Malaya, (May 1926), p. 7; Swettenham's letter to Malay Mail, 31 Oct. 1925 and Swettenham, British Malaya, pp. 272-5.

against the fuller description of the administrative arrangements set out in the Scheme as well as the correspondence about these proposals, it is difficult to ~~ascertain~~ ^{Resist} the conclusion that the loose phrasing was ~~the~~ intentional. The slight description of the Resident General's function, the framing of his powers within the vague conventions of earlier treaties and the reassuring pledges in articles three and six appear as a deliberate attempt to secure signatures to a document of which its full significance was not clearly understood. In this respect there are several points about the signing of the Treaty which must be mentioned. Swettenham was charged with the task of securing the signatures of the several chiefs to the document, but in his discussions with them it is clear that although he outlined the reasons for the change and explained the contents of the Treaty he did not show them the Scheme.⁹¹ Furthermore, in the course of these discussions he appears to have given his pledge that the Resident's powers would not be curtailed. Sultan Idris of Perak said in 1910 that Swettenham made this pledge to him before the Dato Sri Andika Raja and that he would not have signed the treaty without such a promise.⁹² The Yang di-pertuan of

91. Swettenham to Governor, 28 July 1895 in Mitchell to Sec. State, 7 Aug. 1895, CO 273/205.

92. E.W. Birch to Anderson, 23 Mar. 1910, Clementi Papers. See also Chapter VII, pp. 208-7. Mitchell, in his instructions to Swettenham, desired the rulers to understand that they would 'not in the slightest degree be diminishing the power and privileges which they now possess nor be curtailing the right of self-government which they at present enjoy.' (Draft instructions to Mr. F.A. Swettenham, C.M.G., Resident of Perak, inclosed in Mitchell to Sec. State, 1 May 1895, CO 273/203.)

Negri Sembilan in 1925 also recollected Swettenham's explanation that the intention of Federation was to provide for 'mutual help' among the States as well as for 'uniformity of law and administration,' but not for 'unification or amalgamation.'⁹³ Many years later Swettenham admitted it had been difficult to persuade the rulers to sign, but the Sultan of Perak's lead had influenced the other rulers.⁹⁴ The Dato Peneghulu of Jelebu may well have hesitated in signing this treaty as he had the Negri Sembilan treaty of a few months earlier for fear of enabling the Yam Tuan of Sri Menanti re-establish his control of that State.⁹⁵ The fact that the idea of the 'common purse' had to be abandoned because the Sultan of Perak refused to agree to it suggests the care the Sultan exercised in entering into this treaty.

Finally, the Malay version of the Treaty of Federation suggests that Swettenham, who was responsible for the translation, may have omitted phrases and chosen words which could have been objectionable to the rulers.⁹⁷ For instance the passage 'requisition of the Governor' in summoning troops for the defence of the Straits Settlements was omitted.

93. Fed. Co. Pro. 14 Dec. 1925.

94. Swettenham, British Malaya, p. 357.

95. Jelebu March 1897 Report, NSGG, No. 110, 30 Apr. 1897, p. 112.

96. Mitchell to Sec. State, 1 May 1895, CO 273/203; Swettenham letter to Malay Mail, 31 Oct. 1925.

97. A copy is to be found in Mitchell to Sec. State, 13 Aug. 1895, CO 273/205.

And for the word 'Federation' Swettenham chose to interpret it as 'jama'ah' which in Malay means an assembly. It does not suggest the kind of relationship or commitment envisaged by the architects of Federation.⁹⁸ Negri negri bersekutu and persekutuan became the terms used for Federation, but it is worth noting that the Sultan of Perak even drew a distinction between these in 1903 when he referred to the former as indicating united countries and the latter as a 'union' which could suggest an 'amalgamation' of States.⁹⁹

Although the problem of Pahang eventually provoked the proposal for a federation, the final recommendations was conceived with a view to securing the better government of the Malay States. It was as much a reply to the critics of Resident rule as a solution of Pahang's troubles. Federation would provide more efficient government and the facilities for the greater economic development of the country. The Treaty and the Scheme, therefore, represented an attempt to secure administrative reforms without unduly disturbing the formal powers of the Malay rulers. In the following chapters the growth of 'federal' government will be traced up to and including the reforms of Sir John Anderson after 1904.

98. Wilkinson, A Malay - English Dictionary, 1903.

99. Minutes of Conference, SGG, Sup. 2 Oct. 1903, p. 24.

CHAPTER VI.

THE GROWTH OF FEDERAL GOVERNMENT

i

The year 1904 was a significant date for more than one reason. It was the year in which Swettenham retired from the posts he held concurrently as Governor of the Straits Settlements and High Commissioner to the Malay States. It marked the end of his dominance of the affairs of the 'Federated Malay States'¹ which he had helped to establish and which successively as Resident-General (1896-1901) and High Commissioner (1901-04), he had shared.² Moreover, this is a significant date because the structure of government remained substantially unaltered during the next twenty-five years. What Sir Cecil Clementi described in 1930 as a 'bureaucratic amalgamation' was structurally little more than the Federated Malay States government of 1904.³ This is an important point in view of the arguments which raged into the 1920's about the origin of over-centralisation and Swettenham's denial that either centralisation or an

1. The name given the Federation under the Treaty of Federation was 'Protected Malay States.' By executive instructions in 1896 Swettenham instructed that they should be called in future 'Federated Malay States.' (SGG No. 584, 11 Sept. 1896, p. 622.)

2. Frank Swettenham was appointed 'Resident-General to the Malay States' from 1 Jan. 1896. (SGG, No. 400, 3 July 1896, p. 413). He became Governor and High Commissioner 18 Feb., 1901, (~~SSGG No. 27 Sept. 1901, p.~~). W.H. Treacher became Resident-General 12 Dec. 1901, (SSG. No. 8 Mar. 1901, p. 85-4).

3. Clementi Papers, H.C. to Sec. State, 3 May, 1932.

invasion of the rulers' powers had resulted from any decision taken before 1904.⁴ However, central to the whole scheme of Federation and the focal point of later disputes about the nature of the government in the Federated Malay States was the office of Resident-General. It is important, therefore, to determine here how the Resident-General came to achieve a dominant position in the affairs of the Federation and just what powers he exercised.

As has already been observed, his powers under the Treaty of Federation were very ~~sight~~ ^{few}. He was, as it described, 'the agent and representative, of the British Government and responsible to the Governor of the Straits Settlements. The signatories of the Treaty agreed 'to follow his advice' in all matters except questions affecting the 'Muhammadian religion'.⁵ Clearly, under this agreement the Resident-General acquired no formal executive powers, but despite this fact, immediately Federation was inaugurated on 1 July 1896, Swettenham, as the first holder of this office, assumed the position of the chief executive officer. The apparent explanation for this bold assumption of power rests in the widely held belief at the time that the Treaty of Federation, as Swettenham wrote later, 'plainly stated' that the Resident-General was to have 'executive control'.⁶ This interpretation was quite incorrect. It would appear,

4. Swettenham letter to Malay Mail, 31 Oct. 1925, and Letter from Swettenham to H. Berkeley, 2 May, 1936.

5. See article four, (Maxwell and Gibson, Treaties, p. 70.)

6. Swettenham, British Malaya, p. 273.

however, that some confusion arose in the minds of the officials between the Treaty of Federation and the 'Scheme for the Administrative Federation of the Protected Native States.' The Scheme, as already noted, set out very fully the powers and function of the Resident-General and clearly described him as the senior executive officer of the Federation. It had been approved by the Residents, the Governor and the Secretary of State as a suitable working basis for the administration of the four States under the Treaty. Although it was not one of the formal instruments of Federation, it was acted upon as though it had the force of law. All the provisions describing the powers and duties of the Residents and department heads and their relationship to one another and to the Resident-General were issued as an executive order in the Resident-General's name in 1896 and later incorporated in the Federated Malay States General Orders.⁷ Thus, the Scheme takes on much more importance than it would appear to warrant at first sight.

The Scheme established the Resident-General at the centre of the four administrations by making him the 'channel of communication' between the Residents and High Commissioner, bypassing the Colony's Colonial Secretary.⁸ By it he could issue instructions to a Federal or State

7. R.G.O. Circular No. 2 of 1896.

8. At Federation the opportunity was taken to give the Governor the title 'High Commissioner for the Malay States' to enhance the dignity of his office. (Mitchell to Sec. State, 12 June 1896, CO 273/215 and Selangor Enactment, No. 2 of 1896.

officer as well as to the Residents. Appeals from his decisions or instructions were open through his office to the High Commissioner. In financial matters his authority was considerable; he was able to issue instructions for the preparation of the State annual estimates which required his approval before they were submitted to the High Commissioner for his sanction. Expenditure in excess of the estimates and transfer of votes of more than \$500 which did not exceed \$5000 required his approval. All appointments with salaries of between \$600 and \$1200 to provisional or temporary establishments and those on open votes with salaries between \$1200 and \$1800 required the approval of the Resident-General. He also exercised wide powers over promotions and dismissals.

All these provisions were incorporated in the Resident-General's office circular, No. 2 of 1896. Therefore the Scheme in a sense became the authority for the Resident-General to issue executive orders to Federal and State officials alike. Those sections of the Scheme dealing with the changes to be made in the legislative procedure were not laid down in any executive order. They were, nevertheless, adopted and consequently enabled the Resident-General to control the entire process. Thus, in the course of the re-enactment of many old laws and the enactment of much new legislation the Resident-General acquired wide executive powers. By the frequent use of the phrase 'with the approval of the Resident-General' the Resident-General gained executive control over many matters and secured

the right to sanction all subsidiary legislation. Many of these powers lay buried in long, complicated Enactments, but one provides an excellent example of how executive powers were delegated to his office. This law, the 'Resident-General (Incorporation) Enactment, 1898,' was passed by the four States to simplify the security-bond system by which a government officer was required to enter into an agreement with the Sultan in whose service he was employed. With the rapid turnover of officers through numerous transfers after the inauguration of Federation this system proved very cumbersome. However, as the Federated Malay States possessed no single head - sovereignty rested with all four rulers - the Enactment made it possible to incorporate a single determinable individual. The holder of the office of Resident-General thus became the representative of the rulers and by being able 'to sue and be sued and to enter into contracts' the Resident-General assumed the legal responsibilities of the chief executive authority of the Federated Malay States.

Thus, the basis of the Resident-General's assumption of executive powers was not derived from the Treaty of Federation. Apparently through a misconception of what the Treaty actually sanctioned, the Scheme, which envisaged the Resident-General as the senior executive officer, was adopted as a kind of informal constitution for the government of the Federation. Large sections of it were officially adopted through executive orders; much of it, especially those passages dealing with the legislative procedure, were adopted in practice; and many powers implicit in its description of the Resident-General's office accrued to this office through numerous State laws.

The belief that Federation would 'secure uniformity and stability and confidence in the Malay States as safe places in which to invest money' was, as Swettenham wrote in 1929, one of the most compelling reasons for combining the four States.⁹ Throughout the discussions on the proposed federation Swettenham argued that 'uniformity in the administration of the Malay States would eventually lead to better government, by which he meant government designed to encourage the economic development of the country. The Scheme, which he had drafted, was his personal design for the creation of a 'homogeneous, defined and intelligible system' of government.¹⁰

The growth of 'federal' departments was therefore the logical outcome of the Federation. The Scheme envisaged the appointment of eleven 'chief heads' to existing or new departments,¹¹ but at the start of Federation only four appointments were made: these were the 'Legal Adviser', the Commandant, Federate Malay Guides' who concurrently held the post of 'Inspector of Prison,' the 'Commissioner of Police,' and the 'Commissioner of Lands and Mines.'¹² In the following year two more

9. Swettenham, British Malaya (1929 ed.), p. 357.

10. Swettenham memo. 1 Dec. 1894, Swettenham Papers, Item 68.

11. The eleven dept. included the Attorney-General, The Commandant of Sikhs, Chief Engineer, Chief Auditor, Chief Commissioner of Lands and Mines, Commissioner of Police and Prisons, Chief Surgeon, 'Chief Railway Engineer, Chief Surveyor, Inspector of Posts and Telegraphs and Inspector of Schools.

12. SGG No. 400 & 401, 3 July 1896, pp. 412-3; No. 573, 29 Aug. 1896 p. 619; No. 609, 25 Sept. 1896, p. 649; No. 699, 6 Nov. 1896, p. 726.

appointments were created, a 'Secretary for Chinese Affairs' and 'Inspector of Schools.'¹³ However, only one other post was created before 1901, that of the 'Auditor and Account' in 1899.¹⁴ The interesting point about these appointments, however, was the fact that they were not made by a 'Federal Government'. Although selected by the High Commissioner with the approval of the Secretary of State, each officer held his appointment under the authority of the rulers of each of the four States.¹⁵ More important, the powers they were granted, with one or two exceptions, did not entitle these officers to exercise any executive powers; instead they were limited to an 'advisory' role while the departments to which they were to give advice remained separate entities. What is more, in paragraph eighteen of the Scheme, Swettenham declared that these officers were to be 'generally responsible' for their departments, but qualifying this by making the local ~~/~~ State officer 'directly responsible' for the affairs of their departments. However, he recognised that ~~their~~^{there} might be some conflict of jurisdiction and explained to Residents that quasi-federal officers would limit

13. SGG No. 127, 26 Feb. 1897, p. 135; Perak AR, 1897, C. 9108, p.3.

14. Perak AR, 1899, C. 382, p. 20.

15. The Secretary of State laid down in 27 Dec. 1895 that all appointments over £2,400 p.a. would require his approval (Sec. State to Mitchell 27 Dec. 1895, in Mitchell to Sec. State, 1 May 1895, CO 273/203.) Prior to Federation the appointment requiring the Secretary of State's approval was not usually indicated in the Malay State Govt. Gazette. However, after 1895, on Mitchell's instructions, supported by the C.O. the full form was adopted in all announcements. (Mitchell to Sec. State, 26 March 1897, CO 273/228.)

themselves to advising on 'technical points' leaving the local officials in complete executive control of their departments. He admitted that 'differences of opinion' could arise until 'the system became understood' and, therefore, ordered that if disputes did take place that the Resident's orders would stand, pending a final decision by the Resident-General, or if necessary by the High Commissioner. It was an arrangement that Swettenham thought could not be 'otherwise than workable.'¹⁶

How then did these quasi-federal officers carry out their responsibilities before 1901? Immediately it must be noted that with formation of the Malay State Guides the Commandant was given complete executive charge of the force. Under Lieutenant R.S.F. Walker, the First Perak Sikhs were reconstituted and formally enrolled as the Malay States Guides on 1 September 1896.¹⁷ This was achieved by an executive order, but could be said to have had its legal basis in article five of the Treaty of Federation whereby the rulers agreed to supply a 'body of armed and equipped Indian troops' for service in the Straits Settlements.¹⁸ Identical laws enacted in all four States in 1897 made it possible for the Guides to serve in any one of them.¹⁹ Hence, the Commandant was directly subordinate to the Resident-General and not subject to the orders

16. Swettenham memo. 1 Dec. 1894, Swettenham Papers, Item 68.

17. Malay States Guides Annual Report, 1896, in SGG, (Sup.) 21 Oct. 1898.

18. Maxwell and Gibson, Treaties, p. 70.

19. See Perak Enactment, 1 of 1897, 'Malay States Guides Enactment, 1897.'

of the Resident of any State.

More typical of the other federal appointments was that of the Inspector of Prisons which the Commandant held ex officio.²⁰ Although this post was created in 1896 no law was enacted defining the Inspector's duties until 1898. Under this legislation he was obliged to advise on the general administration of all the Federated Malay States prisons and report annually on their condition to the Resident-General and Resident. He was granted no executive powers, except for those delegated under rules made by the Resident for carrying into effect the objects of their enactment. Executive control of prison administration, therefore remained in the Residents hands, subject to the 'approval' of the Resident-General.

While the Malay States Guides formed a single force under a single head, the police departments, at the insistance of the Residents retained their separate identities.²¹ No attempt was made to define the powers of the first Commissioner, until July 1897, and until then his efforts to introduce identical administrative powers caused considerable confusion.²² The Chief Police Officers, the Residents and the Commissioner were all able to issue instructions, but with no clearly defined limits to their authority. His successor, however, was able to

20. Perak Enactment 4 of 1898, 'Prisons Enactment, 1898.'

21. Swettenham to Sec. State, 23 Jan. 1902, CO 273/282.

22. Commissioner of Police AR, 1897, in SGG, (Sup.) 21 Oct. 1898.

persuade the Resident-General to issue orders defining the position.²³ Simultaneously legislation was enacted delegating to the Commissioner, when present in a State, executive powers usually 'vested by law in the Chief Police Officer.'²⁴ Nevertheless, by this legislation the Resident continued to exercise wide control in the organisation, recruitment and deployment of the Police, subject only to the approval and instructions of the Resident-General. The Commissioner's powers, therefore, were, as a State official, of limited executive authority and as a federal officer, of a strictly advisory nature.

The powers and duties of the first Commissioner of Lands and Mines were also left undefined. Although the amalgamated departments of Lands, Mines and Surveys of each State was described as being 'under the supervision' of the Commissioner, no executive authority was delegated to him,²⁵ but after a year of some disputes the Resident-General found it necessary to issue a circular defining his authority.²⁶ The Commissioner was prevented from interfering in the local details of land administration unless so directed by the Resident-General while the Resident, or any land officer, could refer to him for 'advice' on questions of practice or principle. The land code of 1897 and the

23. Ibid; R-G.O. Circular, No.9 of 1897, 'Duties of Commissioner of Police, F.M.S.'

24. Perak Enactment, 16 of 1897, 'Police Force Enactment, 1897', s. 31.

25. SGG, No. 79, 30 Jan. 1897, p. 1021.

26. R-G.O. Circular, No.5 of 1897; SGG, (Sup.) 29 July 1898, p. 36.

mining code of 1899 in no way altered the function of the Commissioner. As before Federation, the Resident continued to exercise wide control over the details of land administration.²⁷ Only his ability to make rule/s and regulations was, in order to secure 'uniformity of action in the different States', subject to the approval of the Resident-General.²⁸ The Commissioner of Lands and Mines was, therefore, simply an adviser who was limited to investigating the various State land departments and making recommendations for their efficient and uniform administration.

In contrast, the powers of the Secretary for Chinese Affairs were much more extensive. This post had not been envisaged in the proposals for Federation or in the Scheme, but the increasing Chinese population and the special problems raised in administering this community led Swettenham to recommend the concentration of 'Chinese matters' under one officer.²⁹ G.T. Hare, who was exceptionally well qualified for the post, assumed direct executive control of the two important departments of Chinese Affairs in Perak and Selangor in 1897.³⁰ He derived, his executive powers under a number of State laws, and his judicial powers of a first class Magistrate under the Courts Enactments.³¹ However, in

27. Perak Enactment, 17 of 1897, 'Land Enactment, 1897' and Perak Enactment, 5 of 1899, 'Mining Enactment, 1899.'

28. Legal Adviser's Report, 9 December, 1896, in Mitchell to Sec. State, 15 Dec. 1896, CO 273/219.

29. Mitchell to Sec. State, 8 Dec., 1896, CO 273/219.

30. Resident-General's AR, 1897, C. 9108, p.3, Negri Sembilan and Pahang had no departments at this time.

31. SGG, No. 140, 26 Feb., 1897, p. 136.

1899 all these powers, as well as others, were brought together in one enactment.³² This remarkable legislation (drafted by G.T. Hare), in which one Colonial Office Official saw the 'terrible engines of oppression,'³³ conferred upon the Secretary extensive executive and judicial powers. It enabled him to initiate enquiries into a wide variety of matters such as regulating Chinese immigration, appointing Chinese Advisory Boards, censoring Chinese publications and granting naturalisation. Besides being empowered to make orders in these matters he was granted original jurisdiction in cases involving Chinese family law and more generally in cases relating 'exclusively to Chinese institutions, customs or law.'³⁴ Under instructions from the Resident-General or Resident, the Secretary could be empowered to 'enquire and report as to any public matter relating to persons of Chinese nationality,'³⁵ and to this end summon before him persons and 'make such order as may be necessary to secure substantial justice being done.'³⁶

32. See Perak Enactment, 7 of 1899, 'Secretary for Chinese Affairs Enactment, 1899'.

33. Macnaghten minute, 20 Feb. in James Swettenham to Sec. State, 6 Jan., 1900, CO 273/260.

34. Perak Enactment, 7 of 1899, sec. 31.

35. Ibid., sec. 2 (i).

36. Ibid., sec. 2 (ii).

He was vested with judicial powers to hear cases sent to him from other courts, brought voluntarily before him or heard under his own direction. The jurisdiction and powers of the Secretary's Court was not granted under the Courts Enactments, as in the past, but described in twelve articles scattered throughout the Enactment. As far as it is possible to measure, these powers were comparable to the Court of a Magistrate of the first Class, but appeals from the Secretary's Court, rather than going to the Senior Magistrates Court, were heard under this law, in the Judicial Commissioner's Court. Moreover, these wide powers were not confined to the Secretary under this enactment, he was also able to delegate his powers to Assistant Secretaries by publishing notice of it in the Government Gazette.³⁷

Leaving aside the Auditor and Accountant for the moment, it may be said of these departments before 1901 that their powers varied considerably. However, the Malay States Guides as a military force could be expected to have possessed exceptional powers in respect to its own affairs and of course did not participate in the general administration of the country. The Secretary for Chinese Affairs possessed wide executive powers in keeping with the role he had played before Federation, but he exercised his powers within the individual States and not over a single department for the Federated Malay States as a whole. With the possible exception of the Commissioner of Police, the others possessed no executive authority. They were, as Swettenham observed in 1896,

37. See SGG, No. 611, 20 Oct. 1899, p. 297.

'inspectors and advisers to the local offices' rather than 'heads of departments.'³⁸

The only other important federal appointment made before 1901 was the Auditor and Accountant. It will be remembered that in the arguments put forward in support of federation, the idea of a 'common purse' was frequently urged as the means of financing the development of less prosperous States.³⁹ It had to be dropped in the final proposals because the Governor believed it formed an obstacle to union.⁴⁰ However, between 1897 and 1899 Swettenham constantly urged the Governor to permit him to establish a common treasury for the four States, but Mitchell, evidently in view of pledges he gave the rulers at the time of Federation refused to support the suggestion.⁴¹ In 1899 Swettenham attempted to persuade Sultran Idris of Perak to accept the idea, but was turned down on the grounds that it would be a violation of the Treaty of Federation. Nevertheless, an Auditor and Accountant was appointed in the same year to assist the Resident-General in the auditing and treasury procedures in the Federation and the decision was taken to attempt to combine the five treasuries in three years under a single officer possessing executive

38. Resident-General's AR, 1896, C. 8661, p.6.

39. See Chapter V.

40. Mitchell to Sec. State, 1 May 1895, CO 273/203.

41. Swettenham discussed the matter in his annual report of 1897 and in correspondence with the Governor. (Resident-General's AR, 1897, C.9108, p.7; Mitchell to Sec. State, 11 June 1897, CO 273/229; 12 Oct. 1897, CO 273/230; Swettenham to Johnson, 5 Jan. 1898, CO 273/245.) Contrast this with his later claim that he would not have allowed the establishment of a common purse. (Malay Mail, 31 Oct. 1925.)

powers.⁴²

However, during this period the growing prosperity of the Federated Malay States and the government's ambitious public works schemes began to make an impact upon the administrative machine. The treasury departments were a case in point. After Federation each State continued to keep its own accounts while the Federal accounts became the responsibility of the Resident-General. Although there was a large measure of central budgetary control exercised by the Resident-General, each State decided how it would maintain and audit its accounts. This arrangement was perhaps permissible so long as revenue and expenditure did not rise much above the 1896 level. But between that date and 1899 the revenue of the Federation increased by about seventy-four per cent. and expenditure rose by nearly thirty-four per cent.⁴³ In addition to the enormous increase in the volume of business done by the revenue departments, the upkeep of proper accounts and regular audits was severely strained by large public works projects especially in railway construction. The appointment of the Auditor and Accountant with merely advisory powers was no solution unless he could implement extensive reforms not only in the procedure of maintaining accounts, but also in the organisation of the treasury departments for the Federation as a whole.

42. Mitchell to Sec. State, 12 July 1899, CO 273/251.

43. Financial AR, 1900, SGG, (Sup.) 6 Sept. 1901.

44. Financial AR, 1899, SGG, (Sup.) 2 Nov. 1900, p.3.

45. His suggestions for this reorganisation of 1899 appear in Financial AR, 1900, SGG, (Sup.) 6 Sept. 1901.

Other departments were experiencing similar difficulties. The construction of a railway line from Prai to Seremban was due for completion in 1903. Problems of administration rather than construction were becoming more important as sections of the line were opened.⁴⁶ The large public works departments which had grown up especially in Perak and Selangor with unnecessary duplication and conflicting standards in such matters as road building required a measure of rationalisation.⁴⁷ Other matters demanded the attention of the government. A report by an Indian government official in 1900 on forest conservation in the Federated Malay States urged extensive reforms in forest management.⁴⁸ The shortage of labour for the rubber estates and the necessity for amending the land code all required attention.⁴⁹ Moreover, like the financial departments of the five administrations, some central direction was necessary if costly duplication was to be avoided and uniform procedures adopted throughout the Federation.

It was, of course, Swettenham's belief that this could be achieved by federal officers exercising influential advise on matters of

46. Railways, AR, 1901, SGG (Sup.) 11 July 1902.

47. Director of Public Works AR, 1901, SGG, (Sup.) 30 May 1902, p.2.

48. H.C. Hill, Report on the present system of Forest Administration in the Federated Malay States with suggestions for the future management of the Forests of those States, 1900, in NSGG, (Sup.) 12 Oct. 1900.

49. Resident-General AR, 1901, C. 1297, p.7.

organisation and technical problems. The destruction of the Resident-General's secretariat records in the second World War unfortunately makes it impossible to determine why these officers were not more effective. It may well be that there were not enough of them or that Swettenham may have undermined their effectiveness by interfering too much in matters of policy and organisation. But it may also have been the Residents who diminished their influence. A Resident could always oppose the instructions of the federal officer from being implemented and until the matter was settled by the Resident-General the Resident's own orders would remain in force. Perhaps a greater obstacle to their effectiveness was the requirement that correspondence between a federal adviser and a State official had to be conducted through the Resident's office.⁵⁰ This ruling burdened the Resident with much unnecessary correspondence in department details. It led to confusion and irritation within the State and federal departments. It provoked public criticism especially from the local press which demanded a 'thorough overhaul' of the administrative machine and the devolution of some of the Resident's powers to federal officers.⁵¹ As the federal officers themselves revealed in their annual reports, the weakness of Swettenham's scheme was the failure to give them any executive powers.⁵²

50. See the Scheme.

51. Malay Mail, 29 May 1901.

52. See for example the Auditor and Accountant's Annual Report, 1900 (SGG, 6 Sept., 1901) and the Directors of Public Works Annual Report, 1901, (SGG, (Sup.), 30 May, 1902).

The appointment of four additional federal officers in 1901 brought matters to ahead. These were the last posts made by Swettenham before he went to the Straits Settlements as Governor and High Commissioner to the Malay States. William Treacher succeeded him as Resident-General. It is interesting that, as in Perak a decade earlier, it was left to Treacher (who Swettenham once described as a 'safe, rather than a brilliant administrator')⁵³ to introduce more regularly constituted administration. Although Swettenham must have had a hand in the direction of these reforms it would appear from the little evidence available that it was Treacher who planned and successfully implemented most of them.

At a meeting of all the Residents held in January 1902 Treacher successfully persuaded them to agree to the creation of 'federal departments' each under a federal officer who would be 'directly responsible' and in 'administrative charge' of their respective department.⁵⁴ He followed this up by issuing a series of executive orders in which he set out in detail the powers and duties of each federal officer.⁵⁵ Not all the federal officers were given executive powers. There were in fact two kinds of federal officers; those which might be called 'quasi-federal', that is federal in name but not

53. Swettenham to Sec. State, 27 Oct. 1901, CO 273/274.

54. Perak AR, 1902, C. 1819, p. 36.

55. These were issued as Resident-General Office Circulars and many appear in Resident-General Officer Circulars, 1896-1902, (Kuala Lumpur, 1903) and the revised version of 1906.

exercising executive control of the State departments, and those who were 'federal' in the sense that they exercised complete executive control of their departments and were free of any interferences from the Residents. Thus, the Commissioner of Lands and Surveys, the Inspectors of Prisons and of Education, the Senior Warden of Mines and the Director of Public Works were 'quasi-federal.' The General Manager of railways although appointed in 1901 only acquired full executive powers over the railways when the State departments were 'federalised' in 1903 but he may be included here with the Commissioner of Police, the Chief Forest Officer, the Commandant, Malay State Guides, the Secretary for Chinese Affairs, and the Financial Commissioner (formerly the Auditor and Accountant) as 'federal.'

The Director of Public Works offers a good example of a quasi-federal officer. Although he was 'directly responsible' to the Resident-General for the 'efficiency' of the Public Works Department of the Federated Malay States he exercised no executive control over the execution of public works. This was left to the 'State Engineer' who was made 'responsible to the Resident' for the successful execution of these projects. The Director did, however, have powers comparable to the Resident in respect of his non-clerical staff.⁵⁶ In contrast, the federal officer with full executive control of his department, not only could decide upon the appointment and promotion of non-clerical

56. R.G.O. Circular, No.36 of 1902, 'Powers and Duties of the Director of Public Works, F.M.S. and of States Engineers'.

57. See for example R-G.O. Circular, No.52 of 1902, 'Powers and Duties of the Financial Commissioner, F.M.S.'

staff, but he could also transfer them from one district to another. Moreover, unlike the quasi-federal officer, he drafted the annual estimates for his whole department ~~and~~ without necessarily referring to the Resident. This, as with his monthly and annual reports, he submitted directly to the Resident-General.

The impact these reforms had on the powers of the State governments is discussed more fully below, but it is clear that they cut deeply into the Resident's authority. The decision to give federal officers executive powers in respect of the State departments was the most important administrative reform in the Federated Malay States until 1932. It appears to have improved the performances of the departments concerned, but its most important result was the centralisation of control of the administration of the Federation in hands of the Resident-General and his officers. Although prior to ¹⁹⁰² ~~Federation~~ the Resident-General was able to issue orders on any aspect of the State governments, these reforms made his authority more immediate through his officers and therefore more effective. To this development Treacher like his predecessor, continued to delegate to his office wide powers on specific aspects of State administration through new legislation.

During and after 1902 the existing State departments such as post and telegraphs, printing, medical along with new ones such as the departments of labour and agriculture were established as federal departments under the direct control of federal officers. Only the

Commissioner of Land and Surveys was abolished; land administration being left in the hands of the Residents while survey work came under the control of a federal officer, the Surveyor-General.⁵⁸

iii

The need for reform of the judicial system in the Malay States, as has already been observed, became apparent in the late 1880's.⁵⁹ The suggestion of the appointment of a judicial officer, as divorced from the executive control, was mooted as early ^{as} 1890.⁶⁰ All of the early proposals for Federation included suggestions for some such appointment, and when the scheme for uniting the four States was finally adopted a 'Judicial Commissioner was included in the first group of appointments.⁶¹ Like the other federal officers, the Judicial Commissioner was appointed by each ruler of the four States, but unlike the other early federal appointments, this officer held and exercised his authority under enactments passed in each State.⁶²

58. Resident-General AR, 1908, p.38.

59. See Chapter V.

60. Smith to Sec. State, 3 Nov. 1891, CO 273/176; Mitchell to Sec State, 4 Sept. 1894, CO 273/197.

61. SGG, No. 607, 18 Sept. 1896, p. 647.

62. This law came into force by the Residents' order in each State on 18 Sept. 1896 (SGG, No. 608, 18 Sept. 1896, p. 647.)

Designed to enable the Judicial Commissioner to exercise extensive influence in the shaping of the court procedures of the Federated Malay States, this legislation delegated very wide powers to the Commissioner. He was empowered to make rules subject to the approval of the ruler in council, fix fees, determine the rules for admission of lawyers, as well as suspending them, in all Federated Malay States' Courts. The Judicial Commissioner's court was empowered to hear all appeals from the Senior Magistrates' courts, and under certain conditions could order cases involving death sentences to be heard before him. When he heard such cases, and in practice almost all capital cases were tried before him, a sentence of death had to be reported to the Sultan in Council.

The effect of this and other legislation, was to make the Judicial Commissioner's court the highest appellate court in the Federated Malay States. The Sultan in Council ceased by this law to function as a final court of appeal while the Residency Courts, the oldest courts under British administration, were abolished thereby removing the Resident from judicial system.⁶³ The Judicial Commissioner, as a barrister of at least ten years experience, was the first entirely judicial appointment in the Malay States. The lower courts continued to be served by officers drawn from the executive branches of the government service.

63. See Perak Enactment, 4 of 1896, 'Abolition of Original jurisdiction of The Residency Court.'

In the years which followed Federation and until 1905, further reforms in the constitution and procedure of the courts were gradually introduced. In 1900 the different judicial systems of the four States were brought under one system with the enactment of separate laws defining in identical terms the power and jurisdiction of the various courts of justice.⁶⁴ In the same year a criminal procedure code, based upon the Straits Settlements Criminal Procedure Code of 1892,⁶⁵ was enacted and two years later a civil procedure code based on the Indian code of 1892 was also formally adopted.⁶⁶

From the time of the appointment of the first Judicial Commissioner to 1904 the Federated Malay States experienced a period of remarkable prosperity and economic growth. Simultaneously, there was a gradual increase in the European investment, particularly in the planting industry, as well as in general commerce. One result of this development was that the courts, particularly in Perak and Selangor, experienced a considerable increase in all cases, especially in the civil matters. The burden of the increase fell upon the Senior Magistrate's Court, while the Judicial Commissioner, by virtue of his position as appeal judge, was unable to assist in hearing these cases.

64. See Selangor Enactment 3 of 1900, 'Courts Enactments'

65. See Perak Enactment 6 of 1900. 'Criminal Procedure Code.'

66. Selangor Enactment 13 of 1902, 'Civil Procedure Code.'

The position of the Senior Magistrates who were not professional barristers but were drawn from the civil service tended to open their decisions to much criticism.⁶⁷ The Selangor Bar Association repeatedly petitioned for professional judicial appointments.⁶⁸ They also requested a revision of the composition and powers of the Judicial Commissioner's Court. In an attempt to reform the judicial system to cope with the increased demands made of it, Treacher, in a series of able correspondence which extended over a year, investigated the possible reforms which might be introduced.⁶⁹ When Sir John Anderson assumed his duties as High Commissioner in 1904 he also took up the question.⁷⁰ In several despatches to the Secretary of State he proposed the creation of a single legal and judicial service with a joint court of appeal serving both the Federated Malay States and the Colony.

When he attempted to implement the scheme in 1905, however, he found that the unofficial members of the Legislative Council refused to approve the proposal to include members of the civil service, as was envisaged by Anderson on the joint court of appeal.⁷¹ The reforms

67. Taylor to Sec. State, 14 Oct. 1903, CO 273/295.

68. Ibid.

69. See Treacher to H.C. 21 Aug. 1903 in Ibid; and enclosures in Taylor to Sec. State, 10 Feb. 1904, CO 273/301.

70. Anderson to Sec. State, 9 June 1904, CO 273/302; Anderson to Sec. State, 10 Nov. 1904, CO 273/303.

71. Anderson to Sec. State, 23 Feb. 1905, CO 273/311.

were nevertheless introduced in the Federated Malay States in January 1906. The court of the Judicial Commissioner and Senior Magistrates was abolished with the enactment of a new 'Courts Enactment' in the four States. In its place was established a 'Supreme Court' consisting of one 'Chief Judicial Commissioner' and two 'Judicial Commissioners' holding their appointments under the authority of the Resident-General with the approval of the High Commissioner.⁷² It was empowered to constitute itself in appeals from the lower courts with at least two judges in attendance. By an Order in Council passed by His Majesty in May 1906, appeals in civil cases would be referred from this court to the Judicial Committee of the Privy Council.⁷³

72. See Selangor Enactment 15 of 1905, 'Courts Enactment.'

73. 'FMS Appeals Order in Council, 1906,' *SGG*, No 411, 6 July 1906, p. 401.

CHAPTER VII

FEDERATION AND RESIDENT RULE.

The kind of government which grew up under the Treaty of Federation possessed several features of a federal system; there was a central government; there were four regional governments each retaining its own fiscal and legislative systems, but none of the governments exercised any authority over another State. Yet, as has already been shown, the failure to define the powers of the several governments deprived the Federated Malay States of a strictly federal form of government and permitted the unrestrained growth of a central government. For whereas in a properly constituted federal form of government the powers exercised by the central government would have been relinquished by the constituent states under some formal instrument, in the Federated Malay States these powers were acquired ad hoc by the Resident-General, partly in law, and partly through his own executive orders issued under a general authority which was assumed to have been granted in the Treaty of Federation. In consequence, as the powers of the central government increased those of the State governments were diminished.

It is remarkable that the growth of central government did not lead to the structure of State government being dismantled and its functions being seized by the Resident-General and the federal departments. Those factors which made possible the growth of central government also made it possible for State government to whither away; the central government

grew, not in accordance with a fixed formula or to a prescription laid down in some political instrument, but in response to wider political and economic demands. The "Constitution" , as Treacher wrote in 1903, was not 'tied down within the terms of written engagements,' but was like that of Great Britain's, 'capable of growth and expansion with the approval of the Ruler for the time being, as conditions change and the prosperity of the State increases.'¹ Yet, although State departments were 'federalized', State governments remained intact as did that of the office of Resident. This is all the more surprising for, as has already been shown, the advocates in the Colonial Office of the federal scheme generally agreed on the need to rationalise the several administrations of the Malay States. Lucas - who was so influential in shaping policy in the Malay States - had hoped eventually to reduce the title and functions of Residents and powers of State governments to the 'level of districts of the same State.'² Such a development was perhaps implied in the Secretary of State's despatch approving Federation as the best plan for securing 'uniformity of policy and administration' and progressively 'closer union.'³ Certainly the advocates of annexation

1. Treacher in Perak 8184/03 quoted in a Memorandum by W.S. Gibson, undated and enclosed in J.M. Martin to Clementi, 20 Dec. 1930, Clementi Papers.

2. Minute by Lucas, 8 Nov. 1895, in Mitchell to Sec. State, 1 May 1895, CO 273/203.

3. Sec. State to Mitchell, 27 Dec. 1895 in Mitchell to Sec. State, 1 May 1895, CO 273/203.

foresaw such a development⁴ and in 1903 the Malay Mail, which reflected the small body of European 'unofficial' opinion in the Federated Malay States, stated that the Residents blocked the development of a completely uniform administration.⁵ It proposed reducing them in number and importance and placing each of them on a level comparable to a Government Agent in Ceylon.⁶

Evidence that such a belief had gained wide currency at this time is to be found in a speech delivered by Swettenham as High Commissioner in 1903 at the second Durbar. He called advocates of such proposals 'Irresponsible and ill-informed people,' and pointed out that the appointment of Residents fell within that portion of the Treaty of Federation which 'expressly stipulated that previous arrangements were not to be interfered with except as specified.'⁷ In fact, the Treaty made no such provision. Article one made mention of 'various previous

4. See Chapter V.

5. Malay Mail, 16 July 1903. The Malay Mail was first published 14 December 1896; J.H.M. Robson was owner-editor of this first English language daily newspaper published in the Malay States. Before establishing the paper in Kuala Lumpur, Robson served in the Selangor civil service resigning in November 1896 as Assistant District Officer, Rawang, (SGG, No. 810, 18 Dec. 1896, p. 800.) He became a land-agent, working in this connection closely with Loke Yew, and served in the Kuala Lumpur Sanitary Board and the Federal Council. While at first supporting the idea of annexation, he later opposed it and became increasingly suspicious of centralised control of the Federated Malay States in Singapore.

6. Malay Mail, 3 Oct. 1903.

7. Minutes of Conference, SGG, Sup. 2 Oct. 1903, p. 25; Quoted in Malay Mail, 3 Oct. 1903. The newspaper presumed this remark was directed towards them; see an earlier article in 16 July, 1903.

Agreements,' but it merely committed the four States to the 'protection' of Great Britain.⁸ Elsewhere the Treaty declared that none of its provisions were in anyway 'intended to curtail.'⁹ the powers of the rulers. Nothing is said of preserving the position or functions of the Residents; where reference is made to them - as in article four - it is provided that the appointment of a Resident-General would not 'affect the obligations of the Malay Rulers towards the British Residents.'¹⁰

Swettenham's declaration was an important statement of his policy made after discussions with the Colonial Office as to the future development of administration in the Federated Malay States. In December 1902, he had written to the Secretary of State about the future of the posts of Resident and Resident-General. He admitted that there was strong support for the view that the 'logical' result of Federation was the abolition of Residents and appointment of 'Secretaries of Government' in the various department of administration, but while he recognised the advantage of such reforms, he could not recommend them on political grounds. He attributed the success of British administration to the 'consideration' shown to the Malay rajas; they saw the Resident as 'their man' and they would 'strongly oppose' any attempt to remove him. In Swettenham's opinion the Resident was seen as a 'local man' known to all in the State and considered as one who would support Sultans against

8. See the Treaty of Federation in Appendix B.

9. Article six.

10. Article four.

other Residents and the Resident-General. A 'Secretary', however, would be of inferior rank, known to few and directly subordinate to departments of the central government. For these reasons Swettenham urged the retention of Residents and resistance to any major alteration of their powers and function in the future.¹¹

This important declaration made before the four rulers, chiefs, members of the State Councils and Residents made it difficult for Swettenham's successors to create a single administrative structure in the Federated Malay States.¹² Nevertheless, the retention of a Resident was somewhat anomalous; he remained responsible for the administration of his State, yet shared that responsibility with several federal and quasi-federal departments; he acted as a spokesman for the ruler, but also was responsible to the Resident-General and High Commissioner. Moreover, as the powers and functions of Federal government increased, the Resident became the focus of parochial, State interests seeking to resist centralised, uniform administration. To illustrate this point it is useful to consider some aspects of the working of government under

11. Swettenham to Sec. State, 7 Dec. 1902, CO 273/284. When the federation proposals were first raised Swettenham at no time suggested the abolition of the Resident. (See Chapter V, and Swettenham Memorandum, 25 Jan. 1893, Swettenham Papers.)

12. The Colonial Office was not bound by Swettenham's decisions or policy statements, but as the reply of the Secretary of State and minutes of Lucas and Stubbs reveal there was general agreement on Swettenham's views of future policy in the Federated Malay States. (Swettenham to Sec. State and enclosures, 7 Dec. 1902, CO 273/284.

the Treaty of Federation, to see how it affected State government and what forces existed to preserve Resident rule.

First, what were the Resident's powers and to what extent were they affected by the central government before Treacher's reforms in 1902? As in the case of the Resident-General, the powers granted to the Resident and proposed in the Scheme were formally adopted first in a Resident-General's circular and later incorporated in the Federated Malay States General Orders.¹³ Each Resident remained responsible for the administration of his State, but, while he was obliged to act upon the Resident-General's instructions, he could appeal to the High Commissioner.¹⁴ His control of appointments and promotions was limited to persons on pensionable and non-pensionable establishments of a salary not exceeding £500 per annum,¹⁵ (or, when paid from open votes not in excess of £1200) and to the promotion of clerks and all other employees receiving a salary up to £1200 per annum.¹⁶ In cases of misconduct, the

13. See paragraphs 6-10 and 18 of Scheme and R-G. O. Circular No.2 of 1896.

14. See General Order 101 (i) in A.R. Venning, D.H. Wise, General Orders of the Federated Malay States, (revised up to November, 1903), (Taiping, (N.O.).)

15. Treacher raised this sum to £1000 in 1903 on the recommendation of a special committee formed to revise the financial chapters of 1903 General Orders; the revision was suggested as the actual equivalent of £600 in 1896. (R-G. O. Circular No.13 - 1903 and G.O. 244(i), General Orders, 1903). The order was revoked upon instructions from the High Commissioner with the approval of the Secretary of State the following year. (Taylor to Sec. State, 9 Feb. 1904, CO 273/301) and raised to £660. (R-G.O Circular No.2 - 1904 or G.O. Slip No.20, 31 May 1904, General Orders, 1903.)

16. R-G. O. Circular No. 2 - 1896 and General Order 37(ii), General Orders, 1900.

Resident was allowed to dismiss an officer receiving a salary of not more than \$300; discharge of officers on a high salary required the Resident-General's sanction.

In addition to being subject to the Resident-General's power to give instructions on any aspect of administration, the Resident's right to issue licenses, set fees, and make rules and regulations under enactments after 1896, were also subject to the Resident-General's approval.¹⁷ The alienation of land remained largely in the Resident's hands; he was empowered to alienate on behalf of the ruler, without reference to the Resident-General, 640 acres to one person provided grants did not exceed an aggregate of this quantity held in partnership or sole ownership by the same person.¹⁸ In the case of mining land, he was empowered to make grants of not more than 300 acres.¹⁹

Centralised budgetary control also impinged upon the Resident's control of public finances. Prior to Federation the Resident was responsible for drafting the annual estimates of revenue and expenditure; these were submitted to the Governor's scrutiny and returned to the Resident and published in the Government Gazette. Authority for making payment was

17. See all legislation enacted after 1896.

18. See sec. 48, Perak Enactment 17 of 1897 and sec. 52, Perak Enactment 13 of 1903. Before Federation, Residents could alienate up to 320 acres in all States except in Perak where the amount was 640 acres. Swettenham successfully urged the higher limit for all States. (Swettenham to U.Sec. of State, 13 Jan. 1896, CO 273/223.)

19. R-G.O. Circular, No. 64 of 1902.

provided under a general warrant from the Resident, but no legislative authority was ever sought.²⁰ After 1896, however, the Resident-General received, approved or directed amendments where necessary to the Resident's draft estimates. Moreover, the Resident could not make any new appointments, increase a salary outside approved schemes, or additional charge of a permanent character without the sanction of the Resident-General.²¹ The growth of quasi-federal and federal departments complicated the drafting procedure still further. The preparation was prepared by the local head and submitted to the Resident; the remaining portion, as well as the federal departments, was compiled by the federal officer and submitted directly to the Resident-General.²² The federal section of the estimates was only submitted to the Resident when important projects were proposed though such procedure was seldom necessary as Residents

20. There were exceptions. For instance in Selangor in 1878, 1880 and 1881 the annual estimates of revenue and expenditure were submitted to the State Council. In 1886 the acting Resident of Selangor wrote; 'I have always acted on the theory that the decision in such matters was delegated by the Sultan to the British Resident, for the time being, acting with the approval of the Governor of the Straits Settlements.' (J.P. Rodger to Col. Sec., 25 Mar. 1886, Sel. Rec. 675/86.) In 1897 legislation was enacted to legalize the Resident's powers to raise revenue and determine custom duties; similar authority was granted in individual enactments but no authority was given to spend revenue. (See Negri Sembilan Enactment, 21 of 1897 and J.A. Swettenham to Sec. State, 6 Oct. 1898, CO 273/241.)

21. R-G. Circular No. 2 of 1896, paragraph 1. R-G. O. Circular No. 4 of 1898 'Instructions regarding the preparation and submitting of Annual Estimates' and Treacher's letter to the Residents, 16 Dec. 1901, printed in Circulars and Schemes issued by the Resident-General's Office, 1896-1903, revised and amended to 6 March, 1903, (Kuala Lumpur, 1903.)

22. See for example R-G. O. Circular No. 42 of 1902, 'Powers and duties of the Chief Forest Officer, F.M.S.

were usually consulted before any major project was undertaken.²³ The Resident-General, therefore, received estimates from the four Residents and the several federal department heads; after approving them he forwarded them to the High Commissioner for his sanction;²⁴ they were then returned to the Resident-General and published as five separate estimates, one federal and one for each of the four States. At the commencement of the financial year (1 January) the Resident issued a general warrant to State treasurers to make payments up to amounts permitted under the States estimates;²⁵ similarly the Resident-General issued authority to the Federal treasurer to fulfil commitments authorised under Federal estimates.²⁶

In the matter of supplementary expenditure, the Resident's authority was limited to sanctioning urgent expenditure not provided for in the annual estimates of expenditure or transfer votes when the amount did not exceed £500 except on personal emoluments. He could transfer unexpended State votes to another State account, but all other supplementary expenditure exceeding £500 required the Resident-General's sanction.²⁷

23. This procedure continued until after the first World War; see T. Lister, op. cit.

24. R-G. O. Circular No. 2 of 1896.

25. G.O. 248, General Orders, 1900 and G.O. 235, General Orders, 1903.

26. G.O. 235(i), General Orders, 1905.

27. In cases of extreme emergency Residents were empowered to approve 'provisionally' amounts in excess of £500 and only afterwards secure the Resident-General's sanction. This practice was abused so much that the acting Resident-General found it necessary to re-issue the regulation in 1901. (R-G. O. Circular No. 14 of 1901.)

The growth of quasi-federal and federal departments similarly reduced the Resident's authority over the several departments of his administration. Of the seven federal officers appointed before 1902 only three possessed executive powers sufficient to ~~effect~~^{6/} the Resident's jurisdiction.²⁸ The appointment of the Commandant of the Malay State Guides removed the control of the military force from his jurisdiction.²⁹ Similarly the Secretary for Chinese Affairs secured very wide executive and judicial powers over the existing departments of Chinese Affairs in Selangor and Perak. Although the enactments³⁰ which determined the Secretary's powers enabled the Resident to instruct the Secretary to enquire into 'any public matter' regarding persons of 'Chinese nationality' and make rules and regulations, his actual interference in department matters was slight.³¹ He drafted rules and regulations under these Enactments, but in conjunction with the Secretary and these always required the approval of the Resident-General before coming into force.³²

28. These were the Malay States Guides, Inspector of Prisons, Commissioner of Police, Commissioner of Lands and Mines, Secretary for Chinese Affairs, Inspector of Schools and Auditor and Accountant.

29. Enactments were passed separately as Perak I of 1897, Selangor 1 of 1897, Negri Sembilan IV of 1897 and Pahang 8 of 1897.

30. Enactments were passed separately as Perak, 7 of 1899, Selangor, VIII of 1899, Negri Sembilan, XIII of 1899 and Pahang, 19 of 1899.

31. See section 1 of Selangor Enactment VIII of 1899.

32. Section 33, Ibid. The Resident-General's approval was also necessary when a Chinese Advisory Board was formed (section 21), when the Secretary delegated his powers to another office (section 32), or when the Secretary was appointed ex-officio member of a Chinese institution (section 31).

The general directing authority of the Resident was assumed to have been given when the Secretary initiated any enquiry. The only executive power the Commissioner of Police possessed was that of a Chief Police Officer - the State officer in charge - and therefore subject to the Resident's instructions on discipline, personnel and deployment of the force.³³ The position of the other departments - quasi-federal departments - such as land, treasury, education and prisons remained subject to the Resident's orders. His control of these, however, could be over-ruled by the Resident-General's instructions in support of the 'advice' of a Federal officer.

The 'federalisation' of five departments by Treacher in 1902 and of others by his successors further ^{on} trenched the Resident's authority within the State. As already observed, under the Resident-General's orders defining the powers of federal officers, the Resident lost complete control of these departments.³⁴ The power of federal heads in respect of appointments, promotions and deployment of non-clerical staff,³⁵ of the drafting of estimates and of supplementary expenditure was identical to that held by Residents in respect to State departments.³⁶ Police, forests,

33. See 1897 Enactments for Perak, 16, Selangor, XVIII, Negri Sembilan, V and Pahang, 9.

34. See Chapter VI.

35. The General Manager also controlled the clerical staff of his department. (R-G. O. Circular No. 2 of 1902. 'Powers and Duties of the General Manager, F.M.S. Railways.')

36. These powers were also held by the Director of Public Works, Inspector of Prisons and after 1905 Posts and Telegraphs but the former officers did not have complete executive control of their departments. The extent of these powers was for the federal officers equal to that held by the Residents under G.O. Circular No. 2 of 1896. See for example R-G. O. Circular No. 36 of 1902.

medical research, treasuries and railways were all placed under federal officers receiving their directions from and being responsible to the Resident-General. The monthly and annual reports and financial returns were sent to the Resident-General instead of the Resident.

Federation also brought about changes in the legislative process and in consequence a further modification of the Resident's authority. Two factors shaped the legislative procedure after 1896: first the desire to secure administrative uniformity and second the necessity to formalise the delegation of State powers to the central government. The former was a deliberate step, while the latter was less conscious and developed gradually. The delegation of power to the central government was made necessary by the failure of the Treaty of Federation to provide a legal framework for the growth of central institutions. Under the direction of the Resident-General, therefore, State governments relinquished control of specific subjects through State Enactments. But the principal factor in centralising legislative procedure sprang from the search for more efficient government in uniform administration.

In the absence of one central legislature for all the Federated Malay States,³⁷ legislative procedure was outlined in broad terms in the Scheme; draft measures required both the approval of the Resident-General and the High Commissioner before they could be considered in Council and

37. Only Mitchell considered the creation of a central legislative, but he dismissed the proposal for the time being as an obstacle to the creation of Federation. (Mitchell to Sec. State, 1 May 1895, CO 273/203.)

when finally passed and assented to by the ruler, they required the High Commissioner's final sanction before being published in the Government Gazette and brought into force.³⁸ Contrary to what this procedure would suggest, legislative business, within this general framework, was centralised in Kuala Lumpur. Although the Governor exercised his powers of sanction with a judicious supervision of content³⁹ and the Secretary of State reserved the authority to amend or disallow enactments,⁴⁰ the initiation, drafting and content of all legislation was controlled by the Resident-General's secretariat.

Although rulers, Residents or federal officers could propose legislation, the Resident-General's approval was necessary before the legislative machinery could be set in motion. Prior to 1904 legislation was of three kinds: that which re-enacted and unified existing laws and extended such laws to all four States; that which was new in content; and that which amended existing enactments. The central direction gave a high degree of uniformity to Enactments.⁴¹ For instance of the twenty

38. See the Scheme, paragraph 6. In practice only those enactments passed unamended required the High Commissioner's further approval. (Minute by Mitchell, 2 Oct. 1896, Sel. 860/96.)

39. Anderson to Sec. State, 15 July, 1909, CO 273/347.

40. Federated Malay States Legislation was submitted to the Secretary of State for the first time in 1895. (Mitchell to Sec. State, 14 May 1895, CO 273/203).

41. As of 1 July 1896 all legislation approved were called 'Enactments' to distinguish them from law enacted by the four States before Federation and variously entitled 'Orders in Council' or 'Regulations'. (Minute by Swettenham 13 Oct. in Mitchell to Resident-General, 25 Sept. 1896, Sel. Rec. 859/96.)

Enactments passed in Perak in 1897, all, if not already law, were enacted in the other three States and in 1904 sixty-eight of the one hundred and two laws enacted were identical in all States while all but two of the remainder were identical for at least two of the four States.⁴² Identical form and content, as well as an over-all improvement in the drafting of enactments after 1896 was due to the appointment of a 'Legal Adviser' with responsibilities comparable to an attorney-general.⁴³ Once proposed legislation had been approved in principle, it was drafted by the Legal Adviser, sanctioned by the Resident-General and forwarded to the High Commissioner for his approval.⁴⁴ The

42. Resident-General Annual Report, 1904, C. 2777, p. 6. As many of these laws were designed to meet conditions in the more advanced States of Perak and Selangor, they were difficult to implement in Pahang and Negri Sembilan particularly in districts with insufficient staff. (Resident-General Annual Report, 1897, C. 9108, p. 7 and Malay Mail, 29 Aug. 1901.)

43. The profusion of poorly drafted laws prior to 1890 as well as important legislative gaps prompted much criticism of the administration. (See for example Smith to Sec. State 3 Nov. 1891, CO 273/176 and Maxwell to Sec. State, 30 Dec. 1893, CO 273/190.) This situation led to the proposal for the creation of this office. (Mitchell to Sec. State, 1 May 1895, CO 273/203.) Originally described in the Scheme as an Attorney-General, he was to be responsible for drafting 'legal enactments, contracts and other legal documents' and to act as an adviser to the several governments on all 'Legal questions.' (Scheme, paragraph 13.) The Colonial Office objected to the title of Attorney-General, but approved the appointment as a 'Legal Adviser for the Federated Malay States'. (Sec. State to Mitchell 27 Dec. 1895 in Mitchell to Sec. State, 1 May 1895, CO 273/203; Sec. State to Mitchell, 5 June 1895 in Mitchell to Sec. State 20 Feb. 1895, CO 273/202.)

44. Anderson to Sec. State, 15 July 1909, CO 273/347.

drafts were then presented to the various State Councils and enacted in the usual way and if passed unamended, were published and brought into force without further reference to the High Commissioner.⁴⁵ The four Enactments were then forwarded by the High Commissioner to the Secretary of State with a report by the Legal Adviser on their purpose, content and form. This procedure was complicated further when identical draft enactments affecting two or more States was considered. Drafts of the proposed enactments had to be sent, as well, to the federal or State officers whose departments they might affect, and also to the four Residents on principles as well as on details of legislation, meetings of Residents and the Resident-General were held in Kuala Lumpur. The first of these meetings was convened in August 1896 to consider the complex land and mining codes which were finally enacted in 1897 and 1899 respectively.⁴⁶ Swettenham held only two other such meetings before becoming High Commissioner in 1901, but under Treacher and his successors the 'Conference of Residents' assumed considerable importance as a device for securing unanimity on legislative programmes and as a valuable council for considering general administrative questions and policy.⁴⁷

45. Minute by Mitchell, 2 Oct. 1896, Sel. Rec. 860/96.

46. Mitchell to Sec. State, 7 Nov. 1896, CO 273/218; Selangor Annual Report, C. 8661, p. 48; Straits Budget, 8 Sept. 1896.

47. The principal source of information of Conferences of Residents are the unpublished abstracts of the meetings of which the largest group are those bound under the title Abstract of Proceedings, 1922-1931 located in the archives of the Singapore National Library and the Index of Decisions, 1897-1928, compiled by J.A. Harvey, (Kuala Lumpur, 1928.)

The Conference of Residents possessed no statutory basis, but simply developed as a kind of 'Consultative Council' to facilitate greater uniformity in administration.⁴⁸ It was convened by the Resident-General at his convenience and consisted in addition to the Resident-General as chairman the four British Residents. Departmental heads were only admitted when matters affecting their departments were under discussion.⁴⁹ There were fifteen meetings between 1896 and 1910. No more than two were held in any one year, and each lasted for about five days with each meeting commencing at 10 a.m. and, with an adjournment for lunch, terminating at 5 p.m.⁵⁰ The agenda of each meeting was circulated by the Resident-General and amended by the suggestions from the Residents or the High Commissioner and usually touched upon questions affecting policy, principles of proposed legislation, important and export duties and deployment of staff. The 'decisions' or 'opinions' of these meetings were recorded in detail in the relevant secretariat files and as well in printed abstracts of the proceedings.⁵¹

48. Resident-General Annual Report, 1903, C. 2243, p. 36.

49. Department heads always retired as soon as discussion on their particular topic was completed. (See Conference of Residents, 3-8 July 1905, Abstract of Proceedings.)

50. Sir Ernest Birch's diaries suggest the extent of these sessions: 'Fapers till breakfast' at 7.30 and 'conference till 5.15 p.m.' and on the evening of the final day a dinner was held for the Residents by the Resident-General at his residence 'Carcosa'. (Diary for 1909, 17-19 May, p. 40, E.W. Birch Papers.)

These conferences provided a physical meeting point for the five governments of the Federated Malay States. It permitted its members to 'exchange ideas' and made it possible for the Resident-General to secure 'uniform action in respect of important matters.'⁵² It also enabled the Resident-General to gain agreement to policies through discussion which otherwise might have raised opposition among the Residents if conducted through correspondence which might have led to an appeal to the High Commissioner. The value of the Conference in this respect is suggested by the use made of it by Swettenham's successors. Whereas Swettenham held only three one day meetings, Treacher convened the Conference five times which sat a total of thirty-one days while Taylor called six meetings which lasted for twenty-five days.⁵³ The reasons Treacher and Taylor made frequent use of these meetings probably lies in the fact that Swettenham's successors could not command his knowledge or influence in the Malay States and while he remained High Commissioner could not gain the support of officials in the Straits Settlements or the Colonial Office. It is hardly surprising that both sought to gain advice and information and secure agreement for their policies among the Residents, for their support was a useful and effective

51. These proceedings were never published as they were confidential conferences and only occasionally were copies sent to the Colonial Office. The first were sent to the Secretary of State in 1909. (Anderson to Sec. State, 2 June, 1909, CO 273/350.)

52. Memorandum by Treacher, 1905 enclosed in Anderson to Sec. State, 26 Dec. 1907, CO 273/331.

53. Index of Decisions, 1897-1928, p.1.

defence against the criticism of a High Commissioner.⁵⁴ When Treacher decided to reorganise the federal departments in 1902 for example, he held two meetings of the Conference of Residents which sat for nineteen days discussing his proposals; he gained the Residents' agreement and was able to present the High Commissioner, Swettenham, with an irresistable programme for reform.⁵⁵

The effect of the Conference on the legislative procedure was marked. All important legislation was referred to it in draft form, returned to the Legal Adviser for any alterations and submitted to the High Commissioner for his approval before being introduced in the State Councils. Through this procedure the Resident was bound to urge legislation upon the ruler and State Council in such a way to prevent any amendment; the argument that an enactment was being passed in identical form in the other States was very effective in securing an agreement.⁵⁶

By the beginning of 1904, the Resident's actual powers had undergone many changes. His judicial functions had disappeared with the abolition of the Residency court and the removal of appeals from the Sultan in Council to the Judicial Commissioner's court. His executive authority had become subject to the general control of the Resident-General while the growth

54. For Treacher's remarks on the usefulness of the Conference see Resident-General's Annual Report, 1903, C 2243, p. 36.

55. Index of Decisions, 1897-1928, p.1.

56. Mitchell to Resident-General 16 Mar. 1899 in Mitchell to Sec. State, 31 Mar. 1899, CO 273/250.

of Federal departments considerably reduced his control over the principal departments of his government. His ability to dominate the legislative process also was subject to the central control of the Resident-General while the legislative programme was undertaken in conjunction with other States and under the control of the Resident-General. Despite these encroachments, the Resident, his jurisdiction severely reduced, remained the chief executive officer, and 'responsible for the administration of his State.'⁵⁷ He endeavoured to maintain the closest supervision of the detailed working of the several State departments as well as those of quasi-federal departments which came under his jurisdiction. He remained responsible for the successful execution of public works and was encouraged to 'freely criticise'⁵⁸ the administration of at least one federal department. No project was undertaken without his advice, if he did not recommend it. Economic development, the improvement of social services, the extension of communications and transport were subject to his suggestion. He was in a sense the Resident-General's representative. Nevertheless, while endeavouring to increase the general prosperity and welfare of his State the Resident also attempted to maintain his influence and control of the administration and protect it against the encroachments of the Federal government. The Resident's success in balancing these sometimes contradictory aims depended

57. G.O. 101(i), General Orders, 1903.

58. See R-G.O. Circular, No. 52 of 1902.

upon his general ability as an administrator, his personal influence with his superiors and his success in obtaining the support of parochial interests. The continued existence of the post of Resident after the Treaty of Federation was the measure of his success in achieving these goals.

Federation was not established without some opposition from the Residents. For instance, when the federation proposals became known, Treacher complained to the Colonial Office that in spite of promotion to Perak 'the position and status of a Resident is entirely changed.'⁵⁹ By placing him under the Resident-General and depriving him of 'all original and personal control and initiative in respect of the most important Departments' his post would be reduced to one 'probably inferior to that of a Collector and Magistrate under the Indian Government System.'⁶⁰ Treacher acquiesced in the new arrangements once it had been pointed out to him that he could not expect a promotion outside the Malay States. Others, among them J.P. Rodger, E.W. Birch, H. Clifford, D.G. Douglas and C. Wray, were persistent defenders of State-rights.⁶¹ With the exception of E.W. Birch, there is, however, no considerable body of evidence to illustrate clearly the nature of

59. Treacher to Lucas, 17 Dec. 1895, CO 273/211.

60. Ibid.

61. During the period covered by this chapter Birch was Resident of Perak 1904-11; Campbell was Resident of Negri Sembilan, 1904-09; Clifford was Resident of Pahang 1896-00 and 1901-04; and Wray was Resident of Pahang 1904-08 and Rodger Resident of Selangor 1896-1901 and of Perak 1901-04.

Resident resistance to the growth of central government. In 1910 Sir John Anderson wrote privately to the Colonial Office that he refused to have Hugh Clifford in Malaya as Resident-General because when Resident of Pahang he was 'much given to playing his own hand' and was very 'cunning' about it.⁶² But when disputes did arise they usually centered upon Perak.

Rodger, who followed Treacher, first as Resident of Selangor and later as Resident of Perak, was an opponent of centralised government. While acting Resident of Perak he expressed his doubts about the creation of a federal department of Chinese Affairs and was inclined to think that greater powers would have to devolve upon local officers.⁶³ He was probably involved in the opposition to the formation of a single police force⁶⁴ and was openly critical in an annual report of the 'unavoidable delay'⁶⁵ caused by referring matters to the Resident-General and the High Commissioner. After a year as Resident of Perak, Rodger, strongly protested the manner in which the Railway Enactment of 1903 was 'forced' upon the State. Unfortunately, none of the correspondence has survived on this dispute, but it is clear the Resident believed that sections of the legislation impinged upon State rights and he attempted to defend his position by referring the Resident-General to the Pangkor

62. Anderson to Collins, 12 May 1910 in Swettenham to Lord Crewe, 3 June 1910, CO 273/368.

63. Perak Annual Report, 1897, C 9108 p. 9.

64. Swettenham to Sec. State, 23 Jan. 1902, CO 273/282.

65. Selangor Annual Report, 1896, C. 8661, p. 37.

Engagement as it was modified by the Treaty of Federation.⁶⁶

His successor, E.W. Birch, made a similar charge two years later. In a case involving an exchange of land for a house between the government and a private individual and an entry in the 1906 State estimates for renovating the building, Birch was charged with irregular procedure by the Resident-General, Sir William Taylor and the High Commissioner, Sir John Anderson.⁶⁷ While agreeing that the entry on the estimates was beyond his authority, Birch refused to accept the claim that the exchange violated any rule. He maintained that it had been the practice before 1895 to make such arrangements when surveys were not always completed before a grant of land was alienated.⁶⁸ But he defended such practice and went on to say that it seemed 'that the position and authority of a Resident is being seriously altered, so much so as to impinge upon the agreement which the Native Rulers signed when they consented to Federation.' He deplored the comparison of a Resident to a Government Agent in Ceylon and regretted the curtailment of 'his powers as is now being done every day in many ways that delay administration and cause a feeling of irritation.'⁶⁹ Pressed to clarify

66. Swettenham is reported to have commented that "references to the Treaty of Pangkor are somewhat out of date and out of place" with regard to a trunk railway running through the whole peninsula.' (Memorandum by W.S. Gibson, undated sent to Sir Cecil Clementi under a covering letter by J.M. Martin, 20 December 1930, Clementi Papers.)

67. Taylor to High Commissioner, 12 Dec. 1905, enclosed in Anderson to Sec. State, Confd. 10 Feb. 1906, CO 273/320.

68. Birch to Resident-General, 7 Dec. 1905, enclosed in Ibid.

69. Ibid.

his statements, Birch asked not to be pressed immediately to give specific examples; however, he repeated his complaint and added that the decline of the Resident's powers preceeded his own appointment in 1904 and suggested that examples could be given and discussed with the other Residents in a Conference of Residents. As for the Treaty of Federation, Birch pointed out that it could 'be broken in spirit as well as in letter' and thought that if the Sultan of Perak was asked, he would repeat a pledge given to him by Swettenham and 'how, in his opinion, what was then laid down has been altered.'⁷⁰

It is perhaps no coincidence that both Residents should have made similar charges, that State rights had been undermined and that the Treaty of Federation had been abrogated by the growth of central government. Both men spent most of their careers in the Malay States. Rodger accompanied Swettenham to Selangor when the latter replaced Douglas as Resident in 1882.⁷¹ There he often acted in Swettenham's place as Resident and was later Resident of Pahang before returning to Selangor and eventually going to Perak as Resident. Birch was the son of the first Resident of Perak. He served first in the Straits Settlements before succeeding Martin Lister as Resident of Negri Sembilan (1897-1900). He became Governor of Labuan and British North Borneo in 1901 and finally returned to the Malay States as Resident of Perak in 1904 where he remained until his retirement in 1911.⁷² Both were regarded as very able

70. Birch to Resident-General, 27 Dec. 1905, Ibid.

71. See Chapter IV.

72. Ibid.

administrators; Rodger being described by Swettenham as one of the 'very best',⁷³ and by others as Maxwell's equal but without his stern manner.⁷⁴ Birch, though no less competent,⁷⁵ shared some of his father's characteristics, he was zealous, but impetuous - a fault which led him to make more than one error of judgement which curtailed his career.⁷⁶ Both Rodger and Birch spoke Malay well and were interested in the Malays. Rodger, for instance, sought to encourage the education of Malays, particularly of the waris negri, in order to bring them into the government service.⁷⁷ He promoted the wider use of penghulus in district administration and encouraged the spread of padi cultivation among the Malays by the extension of irrigation schemes.⁷⁸ While it would seem

73. Lucas minute, 17 Mar. 1892 in Smith to Sec. State, 11 Feb. 1892, CO 273/179; Lucas minute, 5 Apr. 1895, in Mitchell to Sec. State, (Tel.) 5 Apr. 1895, CO 273/194.

74. Malay Mail, 3 Mar. 1897.

75. Lucas minute 22 April 1896, in Mitchell to Sec. State, 24 Mar. 1896, CO 273/213; Lucas minute 29 May, in Mitchell to Sec. State, 2 May 1897, CO 273/229.

76. For instance when Governor of ^{the} British North Borneo Company he wrote to C.P. Lucas suggesting a transfer of this territory to the Colonial Office. He was removed for his want of loyalty. (~~See. State to Anderson, 26 Feb. 1904 in Anderson to Sec. State, , CO 273/~~ Stubbs minute 4 Jan. in Anderson to Sec. State 27 Nov. 1907, CO 273/331.) Anderson only approved his appointment three years after he had taken up his appointment in Perak. (Anderson to Sec. State, 23 May, 1907, CO 273/331.) Writing that 'His heart is in his work and he never spares himself. Unfortunately his impatience and impetuosity are almost as manifest as his zeal and are a source of anxiety to his superiors,' he refused to permit Birch as senior Resident to act as Resident-General. (Anderson to Sec. State, 10 Feb. 1906, CO 273/320.)

77. Minutes of Conference 21 July, 1903; SGG, sup. 2 Oct. 1903, p.24. Malay Mail, 2 June 1900.

78. Ibid. Perak Annual Report, 1902, C. 1819, p. 40.

that Rodger's interests in the Malays were bound up with his concern for the preservation of State-rights and Resident's powers, there is clear evidence that this was also true of Birch.

Birch can be fairly described as the first of that group of officers called 'pro-Malay'.⁷⁹ Although one of the first generation administrators, he gave leadership and encouragement to a group of younger men among them R.J. Wilkinson, R.O. Winstedt, C.W.C. Parr, A.S. Haynes and others all of whom were intensely interested in the Malays, their history, religion and culture. Wilkinson described Birch as 'the last real representative of the Resident of the School of Sir Hugh Low.'⁸⁰ This is possibly so, but Birch did not manage his administration in the personal way that Low governed Perak. His convictions were representative of Low when he expressed the belief that the Malays were the natural heirs of the country and that British administration should be - indeed was obliged to be - concerned with preserving the best of their cultural traditions while at the same time assimilating the Malays into the new order.⁸¹ But he also believed that 'the growing complexity of the

79. C.W. Harrison, who later became Commissioner of Lands and contributed to Papers on Malay Subjects, served under Birch in Perak. He wrote to Birch that during his service in Perak he had seen under him the commencement of 'the Pro-Malay campaign.' (C.W. Harrison to Birch, 3 May 1907, E.W. Birch Papers.)

80. R.J. Wilkinson, in Malay Mail, 30 July, 1932.

81. Wilkinson described it as a 'policy of conservation combined with development.' 'Statement' in E.W. Birch, 'The Malay Race in the Federated Malay States,' 28 May, 1906.)

administrative machine' in a wealthy country 'where large interests are at stake' had allowed for 'indifference' toward and 'neglect' of the Malays.⁸²

And, indeed, the Federated Malay States experienced between 1896 and 1913 a remarkable expansion of the economy and the administration. Revenue for this period increased nearly five times from ~~£~~8,434,083 to ~~£~~44,332,711;⁸³ the production of tin and tin-ore increased in volume while the duty raised from its export nearly trebled even though its share of the total revenue, which had reached as high as 45.16 per cent in 1899 declined to 24.12 per cent in 1913.⁸⁴ The decline was in fact a reflection of the increasing sources of revenue and the growing diversity of the economy. Revenue from the sale of chandhu and duties derived from rubber after 1904 as well as licenses, fees, land and railways formed the bulk of the States' revenue. The coffee boom of the late 1890s was followed in the early 1900s by the rapid spread of rubber cultivation.

As the economy expanded and communications by telegraph and telephone, rail and road increased, the functions of government became more and more involved with providing facilities and regulating the growth activity at the expense of less productive sectors of the economy. The business of government increasingly became centralised in the principal towns such as

82. Memorandum by E.W. Birch, 'The Malay Race in the Federated Malay States', 28 May 1906, E.W. Birch Papers.

83. Resident-General Annual Report, 1896, C. 8257, p. 11 ; Chief Secretary's Annual Report, 1913, C. 7709, p. 1 .

84. T. Lister, op. cit., Appendix E 14, p. 41.

Taiping, Kuala Lumpur, Seremban and Kuantan, centers of European authority and Chinese commercial strength, rather than those of Kuala Kangsar, Klang, Sri Menanti or Pekan; the old Malay capital towns.

The shift of influence was symbolic of the position of the Malay at the beginning of the twentieth century. If not being excluded from participation in the wealthier sectors of the economy, the Malays survived only on its periphery. The general picture of the Chinese working the mines; Indians and to a lesser extent Chinese and Javanese supplying the labour force on the coffee and rubber estates was largely accurate. The Malays remained agriculturists cultivating padi, growing coconuts, collecting jungle produce and planting some cash crops of coffee and later rubber. Fishing, once in the Straits of Malacca a Malay occupation, by 1902 was largely in Chinese hands.⁸⁵ As roads and railways spread they displaced the Malay boatman and bullock-cart driver while the railways employed Indians as subordinate staff.⁸⁶ In the government too, the better English educated Tamils or Chinese were employed in preference to the Malay.⁸⁷ North Indians served in the Malay States Guides while Tamils provided labour for the public works department; Chinese were miners, traders, land speculators, and contractors.

The administration was also losing the close touch it formerly had

85. Resident-General's Annual Report, 1902, C. 1819, p. 27.

86. Malay Mail, 4 Feb. 1898 and 23 Aug. 1898.

87. Malay Mail, 7 Sept. 1897.

with the Malay Ra'ayat. Increased correspondence, the extension of communications and the shortage of staff tended to keep the District Officer at his desk devoting more time to his duties as treasurer, land officer, magistrate and Sanitary Board chairman rather than touring his district.⁸⁸ It was claimed that fewer officers spoke Malay fluently.⁸⁹ and the charge made by the Malay Mail that the majority of European officers 'know little (and care less) about the Malay and his position',⁹⁰ may well have been true. This attitude might be explained by the view held by some that the Malay would eventually be overwhelmed by the Chinese.⁹¹ Others, like Swettenham and Treacher, who were not prepared to go so far, believed that the Malay had failed from the want of energy and ambition to share in the country's prosperity. Still others, however, thought the causes more complex and urged a more positive approach holding that British 'protection' implied a 'moral obligation' to defend

88. Report on Land Surveys, 1907, SGG, (Sup.) 28 Sept. 1908. Malay Mail, 6 Sept. 1898. The Malay Mail described the Resident as being burdened by 'an overwhelming and never ending flood of minute papers' (Malay Mail, 29 May 1901) while one entry in E.W. Birch's diaries reads simply 'oceans of letters.' (Diary for 1907, E.W. Birch Papers.)

89. The Malay Mail commenting on remarks made by Swettenham in London in 1897 claimed that 'seventy-per cent of the European Government Officials could not carry on a conversation with a Malay to save their lives' (Malay Mail, 31 Dec. 1897.)

90. Malay Mail, 6 Dec. 1897 and 6 Sept. 1898.

91. See H.N. Ridley's essay entitled 'The Future of the Malay Race' in Noctes Orientales, (Singapore, 1913) p. 215.

Malay interests in the widest sense.⁹² Between 1897 and 1910, the 'Malay question', as the Malay Mail described it, attracted some attention in the press in the Federated Malay States and Straits Settlements and even in a few annual reports of Residents and Residents-General.⁹³

Birch was among those who deplored the notion that the 'Malay race is devoid of usefulness, if not actually an active hindrance to development',⁹⁴ and described such ~~as~~ a belief as a 'mischievous idea conceived of ignorance.' He wished to preserve traditional Malay society in its important aspects. He believed its economic foundations which rested on the cultivation of padi and fruit orchards permitted the growth of a well balanced stable society. He had no intention of abandoning the more remunerative sectors of the economy, but as he believed tin and rubber were less stable commodities and the alien population of Chinese and Indians transitory, he sought to encourage the spread of more permanent agriculture. He wished to increase the cultivation of padi and, if necessary, to stimulate it by the introduction of 'foreign Malays'.⁹⁵

92. Malay Mail, 8 March 1901.

93. See the Malay Mail for this period and Swettenham's opening speech at the 1903 Durbar and Treacher's Resident-General's Annual Report, 1902.

94. Memorandum by E.W. Birch 'The Malay Race in the Federated Malay States', 28 May, 1906, p. 2.

95. 'Correspondence regarding the Immigration of Foreign Malays into the Federated Malay States,' (Kuala Lumpur, 1910) E.W. Birch Papers.

He appears particularly to have thought it desirable for Malay society to retain the traditional Malay political forms and institutions,⁹⁶ but also believed it essential to train Malays to take a leading role in the new system of government. To these ends he successfully encouraged the investigation of immigration of Javanese and Sumatran peasants,⁹⁷ completed irrigation schemes begun by his predecessor and his last act before retirement was the drafting of proposals which led to the passing of the Malay Reservations Enactment of 1913.⁹⁸ He supported Wilkinson's

96. See Chapter III and events leading up to the Negri Sembilan Agreement of 1898. In Perak, Birch was responsible for restoring the Bendahara's title and having others defined. (Anderson to Sec. State, 16 Mar. 1905, CO 273/311.)

97. These recommendations were first raised by Birch in 1907 but left aside because it was believed that the creation of the Tamil Immigration Fund and the assessment of \$5 per head would drive planters to seek cheaper labour elsewhere. (Conference of Residents, 20 Sept. 1907.) It is interesting that Birch first had to urge the immigration of 'foreign Malays' to supply the main sectors of the economy. The Resident-General opposed his proposals on the ground that 'the economic progress of these States will depend to a great extent on the introduction of foreign labour that will work for foreign planters and miners.' (Federal Secretary to British Resident, Perak, 27 Mar. 1907, enclosed in 'Correspondence regarding the Immigration of Foreign Malays into the Federated Malay States'.)

98. The proposals were first raised under Birch's directions at a Conference of Residents in 1908. (Conference of Residents, 20 Oct. 1908). During his leave before retirement Birch drafted the memorandum which was eventually the basis of the Enactment (A.S. Haynes interview, Dec. 1961.) Instructions were given to the Legal Adviser shortly after to draft the enactments. (Conference of Residents, 14 Nov. 1911.)

proposal which led to the establishment of the 'Malay College' at Kuala Kangsar in 1904⁹⁹ and successfully promoted a scheme to incorporate Malays into the civil service.¹⁰⁰ Finally, believing the notion of the Malay as useless an 'idea to be combated',¹⁰¹ he was successful in proposing the preparation of a series of studies on Malay culture, history and religion. These were published under the editorship of R.J. Wilkinson with the title Papers on Malay Subjects.¹⁰²

Birch was personally committed to the cause of the Malays, a cause which tended to allow him to defend parochial interests where they concerned the Malays. He understood ~~that~~ the preservation of State government as an essential feature of this cause. Putting the issue in another way Wilkinson wrote:

99. The school opened January 1904 with 79 students drawn from the several States. (Perak Annual Report, 1904, C. 2777, p.11; Resident-General Annual Report, 1905 C. 3186, p. 14.) Anderson, however, doubted the final success of the plan, but approved it because the Sultan of Perak gave his enthusiastic support to the scheme. (Anderson to Sec. State, 17 Sept. 1904, CO 273/303.)

100. Rodger urged greater use of Malays in the civil service in the 1903 Durbar. (Durbar proceedings, 21 July, 1903). The subject was discussed further in conjunction with Wilkinson's proposals for the Malay College by the Conference of Residents in 1904 and finally implemented in 1910.

101. Memorandum by E.W. Birch, 'The Malay Race in the Federated Malay States' 28 May 1906, p. 2.

102. The first paper appeared in 1908, See also R.J. Wilkinson's article in the Malay Mail, 30 July, 1932.

If administrative federation is to involve destruction of the ancient customs of the land as senseless obstacle to homogeneity, if ignorance of Malay customs and Malay systems is to become fashionable amongst officers, if uniformity of administration is at all costs to be secured - if, in a word, ancient customs, laws and systems are a nuisance in a community arranged according to a sealed pattern - then the less there is known about Malay customs, Malay rights and Malay aspirations the better. 103

But Birch's view of the role of British administration in the Malay States laid himself open to the charge of 'inciting the Sultan of Perak to kick against the authority of the High Commissioner';¹⁰⁴ indeed such a charge was implicit in Anderson's despatch reporting Birch's complaints of 1905. However, the attitude of the Sultan of Perak was not as passive as this conclusion would suggest. Sultan Idris was the ruler of the senior State. He was the Raja Idris who featured prominently in events surrounding the assassination of J.W.W. Birch, who supported Raja Yusuf as regent and who eventually succeeded to the sultanate in 1887.¹⁰⁵ His long standing influence in Perak politics and his close association with Swettenham, made him a formidable opponent¹⁰⁶ to centralised government. He repeatedly opposed schemes which seemed to him to reduce the powers of his Resident or the authority, stature or prestige of his own office. For instance, no sooner had Federation been

103. R.J. Wilkinson memorandum enclosed in E.W. Birch memorandum, 'The Malay Race in the Federated Malay States,' 28 May 1906, p. 9.

104. Stubbs minute, 14 Mar. in Anderson to Sec. State, 10 Feb. 1906, CO 273/320.

105. FMSGG, No. 154, 15 Jan 1916, p. 175.

106. Swettenham wrote of him that he was an able speaker and was considered an authority of Islam. (Swettenham, British Malaya, p. 343.)

established than he opposed the creation of the office of Judicial Commissioner. Supported by his State Council he opposed those sections of the Judicial Commissioner's Enactment which were to abolish the appellate jurisdiction of the Resident's court and the Sultan in Council.¹⁰⁷ Although the High Commissioner was prepared to amend the offending sections, the Secretary of State refused to agree declaring the Council was a 'non-judicial body'¹⁰⁸ and expressed the view that if the matter was properly explained the members and ruler would approve the legislation. Most members of the Colonial Office believed that Birch, then acting Resident, was the real source of opposition and that he wished to retain his authority of adviser to the Sultan in legal matters.¹⁰⁹ Only Lucas

107. Section 25(a) limited civil appeals to the Judicial Commissioner's court in cases where the value was not less than \$500. (Perak Order in Council, 6 of 1896.)

108. Sec. State to Mitchell, tel. 8 May 1896 in Mitchell to Sec. State, 8 May 1896, CO 273/214.

109. Birch explained the Council's views as follows: 'It is pointed out that this appointment of a Judicial Commissioner is due, in a great measure, to the opinions expressed by the mercantile community of the Straits, by the press and by the legal profession'. He added that 'It is greatly feared that the Judicial Commissioner will come out from home, blind to the interests of the country, and full of legal principles which he will study and give effect to without consideration for Native Customs, ideas and prejudices' and concluded that 'therefore apart from the question of local knowledge, it is a greater safeguard to the people that the Sultan should, in legal as well as in other matters, receive final advice from the Resident.' (Birch to Col. Sec. Confd. 9 May 1896 enclosed in Mitchell to Sec. State, 19 May 1896, CO 273/214.)

proposed a compromise on the ground that the ruler could hardly like being 'deposed' as the final court of appeal.¹¹⁰ The matter was finally settled by Swettenham who attended a meeting of the State Council to reassure the members that they would retain the right to receive petitions and commute and reduce sentences.¹¹¹

During Rodger's Residency, Sultan Idris refused on at least two occasions to agree to the establishment of a 'common purse'. It was also during Rodger's term of office that Idris made his strongest public criticism of Federation. It took place at the second of two 'Durbars',¹¹² held at Kuala Lumpur in 1903 - the year in which Rodger protested against the Railway enactment. As happened at the first meeting in 1897 Durbars were attended by all the rulers, Residents and members of the State Councils with the High Commissioner, or in his absence the Resident-General, as chairman. A wide number of matters generally affecting the rulers and Malays were discussed. The 1903 conference was particularly interesting for the proposals raised by the Yang-di-per Tuan Besar of Negri Sembilan that Malay should be made an official language and the

110. Lucas minute 28 May, in Mitchell to Sec. State, 5 May 1896 CO 273/214.

111. Swettenham to Col. Sec. 13 June 1896 enclosed in Mitchell to Sec. State, 21 June 1896, CO 273/216.

112. The Perak Pioneer pointed out that the word 'Durbar means a "Sovereign Court" and the present function has nothing in common with such' and noted that Durbars held by the Governor-General of India were that of a sovereign's representative holding court and receiving homage of the chiefs. (Quoted in the Malay Mail, 21 July 1897). The early meetings in the Federated Malay States were referred to as 'Federal Councils' as often as 'Durbars'; the latter, however, became the popular term after the formation of the Federal Council in 1909. (Mitchell to Sec. State, 21 July 1897, CO 273/226.)

Sultan of Perak's suggestion that more Malays should be employed in the civil service and more 'foreign Malays' be encouraged to migrate to the Malay States.¹¹³

Before the conference was convened rumours were circulated that Sultan Idris planned to 'express dissatisfaction'¹¹⁴ with the results of Federation. Pressed on the point by Swettenham the Sultan denied the rumour, protesting rather (what Swettenham reported as) his 'joyfulness' at the results of British administration. His only concern, and that of his fellow rulers with whom he had met in private, was the possibility of not receiving a sympathetic hearing from a High Commissioner and Resident-General less well-known to them than Swettenham. They asked for and eventually received permission to appeal directly to the Secretary of State.¹¹⁵ Nevertheless, at the close of the Durbar, Sultan Idris, while speaking at some length on the merits of British administration gave a warning about Federation;

These States are now known as the negri negri bersekutu (the united countries), but the matter of union (persekutuan) I do not quite clearly understand; but you are all aware that the States have become friendly, amicably assisting one another; if, however, the four States were amalgamated into one, would it be right to say that one State assisted the other, because assistance implies something more than one, for if there is only one, which is the helper and which is the helped? A Malay proverb says that there cannot be two masters to one vessel;

113. Minutes of Conference, 21 July 1903, in SGG, Sup. 2 Oct. 1903, p. 22.

114. Swettenham to Sec. State, 25 Sept. 1903, CO 273/295.

115. Sec. State to Swettenham, 17 Nov. 1903, enclosed in Ibid.

neither can there be four Rulers over one country.

It is my hope that the affairs of each State may be managed by its own officers so that the Governments may be separate entities.

The appointment of a wise and prudent Resident-General is of great advantage to all these States united in friendship, and therefore I sincerely hope that he will bear in mind the duties and powers of the Residents, because it is provided in the Pangkor Treaty that the Residents are the advisers of their Sultans. 116

This portion of his speech provoked no comment in Swettenham's despatch on the Durbar and none from the Colonial Office.¹¹⁷ However, when reporting Birch's complaints in 1905, Sir John Anderson revealed that Sultan Idris had earlier that year made a strong speech in the State Council 'practically charging me as High Commissioner with infringing the Treaty of Federation.'¹¹⁸ There is evidence that the Sultan repeated the charge in 1910¹¹⁹ and Sir William Taylor was reported in

116 Minutes of Conference, Ibid. p. 24.

117. When Swettenham forwarded the minutes of the 1903 Durbar to the Colonial Office, he wrote of the Sultan's speech; 'I regret to say it has not been fully reported as no shorthand reporter was present.' (Swettenham to Sec. State, 25 Sept. 1903, CO 273/294.)

118. Anderson to Taylor, 16 Dec. 1905 enclosed in Anderson to Sec. State, Confd. 10 Feb. 1906, CO 273/320. Birch attended this meeting, but made no reply to the complaints.

119. The Sultan's remarks were promoted by a paper on supplementary expenditure in the Annual Appropriation Enactment of 1910; in particular he objected to the limit on supplementary expenditure of £500 imposed on Residents. Birch wrote that the ruler said 'when he signed the Treaty of Federation he arranged with Swettenham, in the presence of the Sato Sri Andika Raja, that the powers of the Resident of Perak should not be curtailed in any way. He said that, if he had not been promised that, he would not have signed.' (E.W. Birch to Anderson, 23 March 1910, Clementi Papers.)

the Colonial Office in 1907 to have said that the ruler made it a 'regular habit to threaten to write to the Secretary of State and the King' about breaches of the Treaty.¹²⁰

In spite of this evidence of the Sultan's long standing dissatisfaction with the results of the Treaty of Federation, the Colonial Office was inclined to agree with Anderson's suggestion that Birch was behind the protests of the 'troublesome' Idris.¹²¹ Anderson and Taylor may not have known of the Sultan's earlier protests as both arrived in the Federated Malay States only in 1904; but Birch's long and checkered career was far more familiar to them. Anderson had disapproved his appointment and after four years of disputes with him urged upon the Secretary of State his transfer to another territory or immediate retirement in 1908.¹²² At the time Birch was in England on leave during which he paid two visits to the Colonial Office. In his first interview with R.L. Antrobus he revealed correspondence between himself and the High Commissioner which made 'a great impression' and in the opinion of the Assistant Under-Secretary raised doubts about Anderson's judgement and suggested that 'impertinence and impetuosity' was shared by others than Birch.¹²³ In the second meeting, the Secretary of State administered a

120. Stubbs minute, 4 Jan., in Anderson to Sec. State, 27 Nov. 1907, CO 273/331.

121. Ibid.

122. Anderson to Sec. State, 13 Apr. 1908, CO 273/340.

123. Antrobus minute, 28 July, 1908, in Ibid.

strong warning to Birch about causing 'friction' in the future.¹²⁴

Birch returned to Perak where he was so successful in fulfilling his promise of good behaviour that Anderson completely reversed his opinion and recommended Birch for a K.C.M.G. on his retirement.¹²⁵

This account of Birch's career illustrates some of the difficulties the Resident experienced under the Treaty of Federation. He lost a large measure of control over the various departments of government and his every action was subject to the 'approval' or 'instruction' of the Resident-General. While administrative rules and practice determined the areas of the authority between the Resident and Resident-General in specific cases, no general regulation was ever formulated to define more precisely the divisions of authority. A strong Resident with pronounced views on the importance of his office could easily find himself in conflict with the Resident-General. Moreover, every Resident had to satisfy himself to what extent he was a spokesman or an interpreter of local interests. For instance the necessity to convey the ruler's wishes on a particular subject to the Resident-General or High Commissioner could open him to the charge of using the Sultan for his own ends. Hence, when Birch wrote to Anderson of the Sultan of Perak's feelings about the Treaty of Federation in 1910 he pointed out that when he had written similar letters earlier, he was 'snubbed'. He added, 'I run the risk of it again being

124. Lord Crewe minute, 1 Aug. 1908, in Ibid.

125. Anderson to Sec. State, (Tel.) 15 Nov. 1910, CO 273/363.

thought that I have been getting at the Sultan, but it is not so.¹²⁶

Also the Resident who held views on administration which might have led him into disagreement with the central government or who held a strong personal dislike of the Resident-General.¹²⁷ might in some situations find his actions construed as disloyal. The anomalous position of the Resident was recognised by Anderson who wrote in 1908 that,

The position and authority of a Resident are great and ill defined and the extent of the right of the Resident-General and the High Commissioner to interfere equally ill defined and liable to be questioned so that, unless the Residents are loyal to what they know to be the policy of the Resident-General and High Commissioner, it is impossible for them to discharge their responsibility to His Majesty's Government. 128

126. Birch to Anderson, 23 Mar. 1910, Clementi Papers.

127. There was a strong antipathy between Birch and Taylor; Anderson wrote to Collins 12 May, 1910 that Taylor 'Loathes' Birch. (Swettenham to Sec. State, 3 June, 1910, CO 273/368. Several Residents apparently resented his appointment; he was regarded as an outsider who spoke no Malay and had no experience of Federated Malay State Affairs, (Swettenham to Harding, 19 Sept. 1910, CO 273/368.

128. Anderson to Sec. State, 13 ^{Apr.} ~~Aug.~~ 1908, CO 273/340.

CHAPTER VIII

SIR JOHN ANDERSON'S REFORMS.

i

Sir John Anderson is remembered as the first High Commissioner who attempted to 'decentralise' the government of the Federated Malay States. His reputation in this respect appears to rest largely upon the assessment made of his reforms by Sir Laurence Guillemard, High Commissioner between 1920-7. By way of defending his own particular programme of reform, the latter tried to show in 1925 that 'the problem of over-centralisation' was of long-standing and that Anderson was the first to prescribe a 'cure'.¹ He maintained that Anderson had been perplexed by the declining powers of the Residents and the High Commissioner's own 'vague and undefined control' of the Resident-General. Rulers and Residents disliked the constant encroachments upon their authority by the central government and had therefore welcomed Anderson's reforms. These Guillemard reduced essentially to three, namely the establishment of the Federal Council over which the High Commissioner would preside 'with a view to the full safeguarding of Malay interests', the arrangement of periodic meetings of the High Commissioner with the Resident-General and Residents, and, finally, the abolition of the post

1. Fed. Co. Paper, No. 39 of 1925, p.1. This should be read with Anderson's lengthy introduction in Fed. Co. Pro., 14 Dec. 1925.

of Resident-General and its replacement by a Chief Secretary to Government. It was Guillemard's opinion that these reforms were not realised partly because there was no real devolution of the Resident-General's powers - only the title was altered - and partly because the Federal Council failed to bring the rulers into 'closer touch' with the High Commissioner.²

Guillemard's account has been accepted in its essentials by others. Sir Cecil Clementi, who attempted to erect a properly constituted federation designed to incorporate the five other Malay States and to decentralize the structure of the Federated Malay States government, also described Anderson's reforms as a 'policy of decentralisation.'³ R.O. Winstedt, when General Adviser to the State of Johore,⁴ and Brigadier-General Sir Samuel Wilson, when Permanent Under-Secretary of State for the Colonies,⁵ also agreed with this assessment of Anderson's work; Rupert Emerson, in the most thorough study of the Federated Malay States written before the second World War, also supported this view.⁶

2. Ibid., p. 2. In defence of his own proposal to do away with the post of Chief Secretary to Government and in defending his analysis of Anderson's policy, Guillemard published Sir John's despatch in which he proposed the abolition of the Resident-General's power. (MSGG, No. Mar. 1926, p. (Malay Mail 11 Mar. 1926 and under the date 27 July 1910 in CO 273/362.))

3. Clementi to Sec. State, 18 Feb. 1922, Clementi Papers.

4. R.O. Winstedt, The Constitution of the Straits Settlements and of the Federated and Unfederated Malay States, (London, 1931). pp. 11-13.

5. Report of Brigadier-General of Sir Samuel Wilson, G.C.M.G., K.C.B., K.B.E., Permanent Under-Secretary of State for the Colonies on his visit to Malaya, 1932, Mar. 1933, C. 4276, p. 7

6. Emerson, op.cit., pp. 145-53.

But Guillemard's description of these reforms was made against the background of more immediate controversies - generally described as the 'Decentralisation Policy' debate - which centered upon the devolution of the Chief Secretary's powers to the rulers and Residents. Yet despite frequent complaints about the central government's encroachments upon State rights, Anderson showed little interest or sympathy with the problem; he was more interested in an essentially different question - that of the relationship of the High Commissioner to the Resident-General.

The issue was clear to Sir George Maxwell who was appointed first British Adviser to Kedah by Anderson in 1909.⁷ Later, between 1920-26, he was to serve under Guillemard as Chief Secretary to Government in the Federated Malay States, and then vehemently opposed Sir Laurence's reorganisation of the administration, rejecting Guillemard's description of Anderson's reforms. These, he declared, were 'directly opposed to any principle of decentralisation'⁸; his intention was, in fact that of 'concentrating power'⁹ in the High Commissioner's office. J.H.M. Robson,

7. Malayan Civil Service List, 1926, p. 135

8. Sir George Maxwell, 'Sir John Anderson and Decentralisation' British Malaya, Sept. 1926, p. 133.

9. Sir George Maxwell, 'The Introduction in the Federated Malay States of a Policy of Decentralisation'. In this privately circulated memorandum written shortly before his death he summed up his views of the background to Guillemard's policy. Like many of the articles he published on the question, his opinions were deeply coloured by his personal involvement in the matter.

who was also closely associated with many of these events as an Unofficial Member of the Federal Council, put the matter in a different light when he described Anderson as 'an Imperialist' who had 'visions of a united Malaya,'¹⁰ Both interpretations of Anderson's policies were basically correct, for his tenure of office was characterised by a period of expansion and consolidation of British interests in the Malay Peninsula and in Borneo.

Before coming to Malaya, Anderson had spent his entire career in the Colonial Office where he rose to the post of principal clerk. While there he carried out several important commissions being attached to the staff of the British Agent to the Bering Sea Arbitration in 1892 and accompanying the Duke of Cornwall and York on his tour of the colonial territories in 1901. Twice, in 1897 and 1902, he was secretary to the Colonial Imperial Conferences.¹¹ With this background, it is perhaps not surprising that he was more concerned with the wider implications of colonial rule particularly in expanding and stabilising frontiers, and widening British commercial interests in these areas. Hence, Malaya - 'that country of anomalies',¹² - with its complex

10. J.H.M. Robson, Records and Recollections (1889-1934). (Kuala Lumpur, 1934), p. 105.

11. Colonial Office List, 1904, p. 464 and The Times, 25 Mar. 1918, p.7.

12. This comment was made by J. Risley when remarking on Anderson's proposals for reorganising the Federation administration, but might well have been made by Anderson himself. (Risley, 28 Apr. 1909, in Anderson to Sec. State, 8 Feb. 1909, Confd. CO 273/349.)

administrations of varying political status must have appeared to Anderson unnecessarily complicated, requiring a measure of rationalisation and more central control. And in such areas as the Siamese Malay States, Johore and Borneo, regions of particular interest to Britain, the lack of direct, effective control must have appeared to him less than satisfactory. Indeed, it was in these peripheral areas that he showed an immediate interest. Through his efforts, the Malay States of Kedah, Perlis, Kelantan, and Trengganu, nominally under Siamese control, were brought under British protection; Brunei and later Johore were brought effectively under control by the appointment of resident British officers.

Anderson's achievement in these areas was the successful conclusion of the policies already introduced or suggested by his predecessors. He pursued them with interest and energy and as well with the support of his former colleagues in the Colonial Office. In Borneo, for instance, the practice of allowing the British North Borneo Company and the Raja of Sarawak to alienate the territories of the tiny sultanate of Brunei came under review in 1902 and was eventually reversed.¹³

13. A review of policy in Brunei was initiated in a letter written by the Sultan of Brunei to King Edward VII and Swettenham in which he complained of the behaviour of the British Consul (G. Hewett) and that the latter conspired with Raja Brooke to annex more Brunei territory. (Sultan of Brunei to Swettenham, 21 Dec. 1901 and 2 September 1902, enclosed in FO to CO, 13 Nov. 1902, CO 144/77 and McArthur to Anderson, 2 June 1904 in FO to CO, 3 Aug. 1904, CO 144/78). Stubbs raised the suggestion of appointing a Resident in a minute dated 28 Feb. 1903 (FO to CO 26 Feb. CO 144/77). A summary of previous policy appears in Lucas' minute of 14 Mar. 1903 (FO to CO 14 Mar. 1903, CO 144/77).

Following an investigation by a Straits Settlements official, the Foreign Office and Colonial Office decided to make secure the integrity of what remained of the sultanate¹⁴ in accordance with the recommendations made by this officer and by Sir Frank Swettenham.¹⁵ The island of Labuan, administered at the time by the British North Borneo Company, was to be returned to the Straits Settlements and its resident executive officer made British Resident for Brunei.¹⁶ Effect was given to these proposals in 1905 with the signing of a treaty by which Brunei came under the protection of Great Britain and received a Resident with powers comparable to those granted under the Treaty of Federation.¹⁷ The important point of this policy was that it would permit the establishment

14. FO to CO, 4 Mar. 1904; Sec. State of Anderson, 22 Apr. 1904 in FO to CO, 23 Apr. 1904 CO 144/75.

15. Stewart McArthur's report appears in FO to CO, 31 Mar. 1905, CO 144/79. Swettenham's views summarised by Villiers minute of 21 Dec. 1903 in Swettenham to FO, 14 Jan. 1904 enclosed in FO to CO, 27 Feb. 1904, CO 144/78.

16. A crown colony between 1848-49, Labuan was administered by the British North Borneo Company from 1890 to 1905 when the Governor of the Straits Settlements became Governor of Labuan while the island remained a separate colony. In January 1907 it was annexed to the Straits Settlements becoming part of the settlement of Singapore. (Colonial Office List, 1911, pp. 349-50.)

17. Clause one of the agreement was based upon clause four of the Treaty of Federation. It provided for a Resident 'who will be the Agent and Representative of His Britannic Majesty's Government under the High Commissioner' whose advice 'must be taken and acted upon on all questions' excepting religion in order that 'a similar system may be established to that existing in other Malay States now under British Protection.' (Maxwell and Gibson, Treaties, pp. 151-2.)

of a 'nucleus of an administration'¹⁸ similar to that in the Federated Malay States which could be extended to North Borneo and Sarawak. It was believed at the Colonial Office that Brooke's administration was 'unprogressive' and that both Sarawak and North Borneo, where the chartered company appeared to be financially insecure, would eventually fall to the crown.¹⁹

Similarly, Anderson's proposals to secure stable, effective government in the Malay States, then under Siamese control, were sympathetically regarded in the Colonial Office. In 1907 Lucas could write of Anderson's recommendations that these States were those which 'We have always held here...ought to come to us.'²⁰ Immediately upon assuming his post Anderson launched a strong attack upon the work of the Siamese appointed British adviser in Kelantan²¹ and during 1905-6 resisted the appointment of such an officer to Kedah as he believed he would further entrench Siamese authority in that State.²² Combining criticism of

18. Stubbs, 14 Apr. in FO to CO, 31 March 1905, CO 144/79 Lucas was probably the first to suggest such a scheme. He wrote in 1895 that he looked to the future when North Borneo and Sarawak would be administered by a 'Resident-General at Labuan and residents on the mainland' and under the 'High Commissioner at Singapore'. (Lucas, 18 May 1896, in Hughes to Sec. State, 14 May 1896, CO 144/70).

19. Stubbs, 14 Apr., and Ommanney, 27 Apr. in FO to CO, 31 Mar. 1905, CO 144/79.

20. Lucas, 29 Apr. in Anderson to Sec. State, 28 Apr. 1907, CO 273/330.

21. Anderson to Sec. State, 20 Nov. 1904, CO 273/303.

22. Anderson to Sec. State, 30 Nov. 1904, CO 273/303; Anderson to Sec. State, 29 Mar. 1905, CO 273/331 and Anderson to Sec. State, 16 Feb. 1905, CO 273/311.

Siamese administration of these States and alarming accounts of the activities of foreign concessionaires with lengthy descriptions of the strategic and commercial value of the region, Anderson repeatedly advocated the extension of British influence and control in the area. In 1905, for instance, he raised the novel proposal of leasing all the Malay States from Siam and introducing British administration modelled after that of the Federated Malay States.²³ When in 1907 France secured further territorial gains in eastern Siam, he successfully urged the Secretary of State to ask the Foreign Office to reconsider its reluctance to open negotiations with Siam for further British concessions in the Malay States.²⁴ The negotiations which followed led to the signing of a treaty in 1909 by which Siam transferred to Great Britain 'all rights of suzerainty, protection, administration and control' of Kedah, Perlis, Kelantan and Trengganu and allowed the appointment of 'British Advisers' to the four States.²⁵ Only Kelantan, however, before the first World War gave formal recognition to these appointments by treaty.²⁶ Nevertheless, through these officers effective control was secured of the four

23. Anderson to Sec. State, 16 Nov. 1905, CO 273/312.

24. Anderson to Sec. State, (Tel.), 27 Mar. 1907, CO 273/330.

25. Maxwell and Gibson, Treaties, p. 88.

26. Ibid., pp. 109-11.

northern Malay States, while under the treaty of 1909 the limits of British influence in northern Malaya were formally demarcated.

In Johore Anderson pursued a similar policy with an equal vigour. As in Kedah, he was not prepared to appoint a British consular official - which he could do under the Johore Treaty of 1885 - who could not exercise any executive authority.²⁷ Rather, he preferred to wait until an opportunity arose which would enable him to compel the Sultan to accept a resident British officer with powers comparable to a Resident. Such an opportunity occurred in 1906, when it was thought that the Sultan was granting 'imprudent and reckless' concessions to highly speculative European firms.²⁸ Anderson successfully urged the Colonial Office to insist that the ruler should accept D.G. Campbell, then Resident of Negri Sembilan, as 'Resident at Johore' with a seat on the State Council.²⁹ Eventually Sultan Ibrahim agreed and Campbell took up his appointment in 1910. In 1914, by a supplementary agreement to the 1885 treaty, the Sultan formally accepted the appointment of the 'General Adviser' whose 'advice must be asked and acted upon' on all matters excluding those of Islam and Malay custom.³⁰

27. Anderson to Sec. State, 4 May 1905, CO 273/312; Anderson to Sec. State, 26 Dec. 1905, CO 273/312.

28. Anderson to Sec. State, (Tel.), 2 Mar. 1906, CO 273/320.

29. Ibid.

30. Maxwell and Gibson, Treaties, p. 136. See also the conditions set out in the exchange of correspondence on pages 134-5 in which disputes between the General Adviser and the Sultan were to be submitted to the Johore State Council.

The extension of formal and effective control to these areas by treaty and by the appointment of resident British officers formed the background to Anderson's reforms in the Federated Malay States. Although many of these events occurred simultaneously with his reforms in the Federation, one feature common to Anderson's policies was his desire to subordinate the several administrations to British Officers to the control of the High Commissioner. It was a theme which ran through all his work in Malaya. Yet, while it was easy to secure such a relationship in the newer administrations under British officers, it was much more difficult to achieve in the older Federated Malay States where the structure and organisation of government had become fixed. In Anderson's opinion, the difficulty was that the Resident-General had become 'quasi-independent' of the High Commissioner who only exercised nominal control of Federation affairs.³¹

This situation had come about partly as a result of geography and partly by the design of the founders of Federation. ~~Singapore~~ in 1895 was a long way from Kuala Lumpur. Lengthy journeys by sea, rail or road between the two prevented the High Commissioner from keeping in close touch with the details of administration. Furthermore, it was the intention of those who proposed Federation that the Resident-General should relieve the Governor of the enormous amount of work in connection

31. Anderson to Sec. State, 27 July 1910, CO 273/362.

with the four States.³² As has already been shown, Swettenham even attempted to divorce the administration of the Federated Malay States from the High Commissioner's control by proposing that the Resident-General might deal directly with the Secretary of State, or that matters in dispute between himself and the High Commissioner should be referred to the Secretary of State.³³ It was Swettenham's view - one which he held throughout his career - that special conditions of the Malay States required a wide knowledge of the affairs of these States through understanding of the rulers, the chiefs, and the Malay language. Hence, the Resident-General should be trained in the Malay States and have wide powers over the policies and details of the administration. By 1902 Swettenham had abandoned the idea of formally separating the Federated Malay States from the High Commissioner's control and was prepared to admit that if Residents with a training in the Malay States should continue to be appointed then Resident-Generals might be chosen in the future from outside the Federation.³⁴ But he did not propose that the Resident-General's powers should be diminished in any way: he should remain 'subordinate' to the High Commissioner as the post was an essential

32. Smith to Sec. State, 30 June 1893, CO 273/188.

33. Lucas, 9 Mar. in Mitchell to Sec. State, 23 Jan. 1896, CO 273/212; Lucas 9 Oct. in Swettenham to Sec. State, 4 Sept. 1902, CO 273/283 and Swettenham to Sec. State, 7 Dec. 1902, CO 273/284.

34. Swettenham to Sec. State, 4 Sept. 1902, CO 273/283 and Swettenham to Sec. State, 7 Dec. 1902, CO 273/284.

'link' which kept all the Federal machinery of Government together and was representative of the 'unity of purpose' and the 'identity of treatment.'³⁵

Under the Treaty of Federation and the enactments which altered the title of Governor to High Commissioner, the latter received no executive authority in any of the Malay States. One or two laws enacted in the Malay States enabled the High Commissioner to take executive action in such matters as currency and immigration, but de jure he exercised no executive powers in the Federation.³⁶ Under the Scheme of 1896, however, he was required to act upon specific matters affecting the administration.³⁷ His approval was necessary for all appointments where the salary exceeded \$1,800 or for dismissals when the sum exceeded \$600. In questions of public finance he had to sanction the annual estimates or revenue and expenditure and approve any supplementary expenditure when it exceeded sums of \$5,000.³⁸ But as in legislative

35. Swettenham to Sec. State, 7 Dec. 1902, CO 273/284. Swettenham's view of the status of the Resident-General's position was suggested in 1903 when he proposed the creation of the office of 'Federal Secretary', made necessary by the increasing responsibilities of the Federal government, to have standing and authority comparable to that of a Colonial Secretary in a Crown Colony. The Secretary of State refused to approve the proposal, and he noted that he equated the Resident-General's post to that of a Colonial Secretary. (Swettenham to Sec. State, 28 May, 1903 and Sec. State to Swettenham, 3 July, 1903, CO 273/294.)

36. See for example Selangor Enactments 16 of 1903, 'Coin Import and Export', and 15 of 1907, 'Malay States Guides'.

37. Scheme

38. Scheme

matters, the control of finance by the High Commissioner was limited by the centralisation of procedure in the Resident-General's office. The drafting of the annual estimates, the programming of public works projects, the approving of excess expenditure or the transferring of votes was in practice decided by the Resident-General. Under Swettenham, and later Treacher, the Resident-General gained almost unfettered control of the administration. The judicious exercise of these powers meant that the subordinate officers, particularly Residents, seldom invoked that clause in the Scheme which enabled them to appeal against the decisions of the Resident-General to the High Commissioner. Hence, decisions affecting policy were usually submitted to the High Commissioner for his approval, but his isolation within the policy-making procedure meant that he would rarely resist the Resident-General's recommendations. While the High Commissioner could issue instructions or call for papers and while he was always kept in touch with progress reports on all matters, he was only brought into the policy-making process through the Resident-General's initiative. Minute papers or files were not normally circulated to him and correspondence between the High Commissioner and Resident-General was carried on through formal letters in which the arguments of those other than the Resident-General were usually summarized.³⁹

Such was the position of the High Commissioner when Anderson took up his appointment in 1904. Sir William Taylor, whom Anderson appointed to succeed Treacher in the same year, did his best to preserve the independence he had inherited. As one Colonial Office characterized.

39. *Anderson to Sec. State, 27 July 1910. CO 273/362.*

his administration, he attempted to erect a 'ring fence' about the Federated Malay States, by stubbornly refusing to bend to Anderson's efforts to assert his control over the government of the Federation.⁴⁰ He quarrelled frequently with Anderson⁴¹ and assumed in public the attitude of a champion of Federation interests - a pose which Swettenham had encouraged during his tenure of office with effect.⁴²

iii

The situation was immediately apparent to Anderson and upon appointing Taylor as Resident-General a few months after his arrival, he outlined his future policy.⁴³ While urging the Secretary of State to reconsider his refusal to increase the Resident-General's emoluments,⁴⁴ he proposed making the Resident-General a Lieutenant-Governor of the Straits Settlements.⁴⁵ Such an arrangement would have an 'excellent political

40. Collins, 27 Sept., in Swettenham to Harding, 19 Sept. 1910, CO 273/368.

41. Anderson to Collins, 12 May in Swettenham to Lord Crewe, 3 June 1910, CO 273/368.

42. Anderson to Sec. State, 27 July 1910, CO 273/362. Anderson also claimed that least of their differences by the Resident-General's staff had led to the portrayal of the Resident-General as the champion of Federated Malay States interests. (Anderson to Collins, 12 May, Ibid.)

43. Anderson to Sec. State, 3 Sept. 1904, CO 273/303.

44. Anderson to Sec. State, 14 Sept. 1904; Sec. State to Anderson 21 Oct. 1904, in Anderson to Sec. State, 3 Sept. 1904, CO 273/303.

45. Anderson to Sec. State, 24 Nov. 1904, CO 273/303.

effect' in both the Colony and the Federated Malay States not only because it would strengthen the Resident-General's hand in dealing with subordinate officers and the rulers, but, at a time when the administration of the two territories 'constantly tends to become closer', it would also be of the 'greatest convenience' to have the Resident-General in the Executive Council of the Straits Settlements.⁴⁶

The Secretary of State refused to entertain any such scheme;⁴⁷ nevertheless, it was a revealing indication of Anderson's future intentions. As has already been shown, the theme was apparent in the proposals he put forward earlier in the same year to 'amalgamate' the judicial and legal establishments and create an appeal court for the Straits Settlements and the Federated Malay States.⁴⁸ Clearly, at an early stage, he desired to 'mark more clearly the intimate association'⁴⁹ of the two administrations and reduce the Resident-General's 'large measure of independent power of action'.⁵⁰ But beyond making more frequent visits to the Federated Malay States than any of his

46. Ibid.

47. Sec. State to Anderson, 6 Jan. 1904, in Anderson to Sec. State, 24 Nov. 1904, CO 273/303.

48. See Chapter VI and Anderson to Sec. State, 9 June 1904, CO 273/302.

49. Anderson to Sec. State, 3 Sept. 1904, CO 273/303.

50. Anderson to Sec. State, 14 Sept. 1904, CO 273/303.

predecessors, Anderson put forward no new proposals until 1907.⁵¹

In that year he returned to the matter again. When introducing proposals for much needed reform of the Federated Malay States legislative procedure he laid the foundation for bringing the administration under his direct control.⁵² First he recommended that there be created a 'Federal Council' and 'Administrative Council', but when he failed to receive a reply from the Colonial Office, he wrote again in 1908 forwarding a letter from the Planters Association of Malaya suggesting an alternative arrangement whereby a Federation 'planting' representative could be appointed to the Straits Settlements Legislative Council.⁵³ In a private letter to the Colonial Office he wrote that it would be 'a great convenience' if for all matters except finance 'the Council might sit with and be part of the Leg. Council of the Colony'.⁵⁴ The idea was rejected as 'perfectly absurd.'⁵⁵ Yet, novel as the proposition may have been, it showed Anderson's continuous interest in the idea of associating the two administrations. This

51. Ibid.

52. Anderson to Sec. State, 26 Dec. 1907, CO 273/331.

53. R.W. Harrison to High Commissioner, 21 Oct. 1908 enclosed in Anderson to Sec. State, 28 Oct. 1908, CO 273/341.

54. Anderson to Fiddes, 18 Oct. enclosed in Ibid.

55. Stubbs, 15 Dec. 1908, in Ibid.

suggestion, like his earlier proposals, all turned upon linking the Federated Malay States in some way to the Straits Settlements. However, his proposal for a Federal Council reversed the direction by bringing the High Commissioner into the Federation. Seen in this way, closer association appears as a device to enable the High Commissioner to participate in the affairs of the Malay States. As Anderson wrote later, the creation of the Federal Council was the 'first step' to 'remedy' his lack of control over the legislative procedure of the Federation.⁵⁶ Further reforms in 1910 concluded his plan to subordinate the senior resident executive officer in the Federated Malay States to the High Commissioner's authority formally as well as in practice. Taken together, these reforms constituted a part of Anderson's wider policy of bringing all the British dependencies in the region under the effective control of the High Commissioner. As he wrote in 1910:

What I want is that the High Commissioner who is responsible for the whole of Br. interests here should be placed unmistakeably in a position to fix the policy of the several administrations and to coordinate them. ⁵⁷

There is little evidence to suggest that Anderson's reforms were initiated with the objects of returning some of the Residents' former powers and placating such rulers as the Sultan of Perak, or that they were designed to attract the other Malay States to join Federation. Doubtless Anderson envisaged combining all the Malay States under British

56. Fed. Co. Pro. 2 Nov. 1910.

57. Anderson to Collins, 29 July in Anderson to Sec. State, 27 July 1910, CO 273/362.

protection in some wider union. Sir George Maxwell later maintained that Anderson had considered such an idea and believed that the quickest way of improving their condition was by including the other Malay States in Federation.⁵⁸ He was apparently surprised to find that the rulers of the former Siamese controlled States 'were filled with wild horror and detestation' of everything connected with the Federated Malay States.⁵⁹ Maxwell attributed this attitude to their dislike of the 'excess of centralisation' which deprived the rulers and Residents of any real power; he also claimed that Anderson agreed with this view of the Federation and quoted him as saying that the four States were 'tied into far too tight a knot' but 'the difficulty was to know how to undo it,'⁶⁰ Of course, Anderson was aware of the complaints of the Residents and rulers against this development and he made frequent reference to them in his despatches to the Colonial Office and in his defence of his reforms. In the Federal Council he even claimed that Sultan Idris had initiated the move to change the Resident-General's title.⁶¹ There is,

58. Based upon a summary of Maxwell's views by Clementi, 18 Feb. 1932 and upon a Memorandum written by the latter entitled 'Notes on a policy in respect of the Unfederated Malay States,' Eastern No. 135, 15 Oct. 1920, Clementi Papers.

59. Quoted by Clementi in a memorandum entitled 'Notes on the proposed abolition of the post of Chief Secretary to Government, F.M.S.' 4 Dec. 1932. Clementi Papers.

60. Maxwell in 'Notes on a policy in respect of the Unfederated Malay States', Ibid.

61. Fed. Co. Pro., 2 Nov. 1910 and 10 Nov. 1910.

however, no evidence in Anderson's despatches which suggests that he was interested in devolving any of the Federal powers to the States. On the contrary, he claimed that by bringing the High Commissioner into direct contact with the Residents through the Conferences of Residents he would encourage them to consider the matters of administration on the Federal level.⁶² As for the rulers, although they should be members of the proposed Federal and Administrative Councils, he thought they would rarely attend because of their slight knowledge of English and of their general lack of interest in the matters of government.⁶³

His references to the declining powers of the State governments were only intended to illustrate the growth of unrestrained power in the office of the Resident-General for his main concern was to circumscribe the exercise of this power. Hence, in May 1910 he wrote privately to the Colonial Office that he intended modifying the position of the Resident-General to bring him 'more directly under control.'⁶⁴ He went on to describe the office being 'far too independent' and in his despatch in July gave evidence to show how the Resident-General exercised authority 'subject only to the control of the High Commissioner in regard to such matters as might be referred to him.'⁶⁵ In Anderson's opinion, the

62. Anderson to Sec. State, 27 July 1910, Confd. CO 273/362.

63. Anderson to Sec. State, 8 Feb. 1909, CO 273/349. in the Federal Council he was reported to have said, 'The Rulers naturally do not take an active part in any discussion.'(Fed. Co. Pro., 19 Jan. 1911.)

64. Anderson to Collins, 12 May 1910 in Swettenham to Lord Crewe, 3 June 1910, CO 273/368.

65. Anderson to Sec. State, 27 July, 1910, Confd. CO 273/362.

Treaty of Federation had failed to provide any form of control over the 'central authority'. Instead of the Resident-General being the 'mouth-piece' of the High Commissioner and providing a link between the Residents and the High Commissioner he had become 'the final authority' except when appeals were made to the High Commissioner.⁶⁶ No longer could the Resident-General be permitted to function as a 'quasi-independent head of a separate administration' but rather he must act as 'the principal advise, and mouth-piece' of the High Commissioner who must be the 'real responsible head' of the administration of the Federated Malay States.⁶⁷ Anderson's proposals for the establishment of the Federal Council and for the creation of the post of Chief Secretary to Government were all designed to secure this end.

The idea of creating a central legislative authority for all the Federated Malay States was of long standing. It had been considered when federation was first proposed but its establishment was then thought to be premature.⁶⁸ In its place meetings of what was variously called the 'Durbar' or 'Federal Council' consisting of the rulers, Residents, Resident-General and High Commissioner as well as all the members of the States Councils were convened on two occasions to discuss among other

66. Fed. Co. Pro., 2 Nov. 1910 and Ibid.

67. Ibid.

68. See Chapter VII.

things the principles of future legislation.⁶⁹ But these meetings possessed no legislative authority and while they could consider draft enactments or propose bills, the legislative process developed quite independently of them.⁷⁰ But the existing system of centralised legislation controlled by the Resident-General advised by the Conference of Residents whereby legislation was enacted by four State Councils was extremely cumbersome. Frequent requests, particularly by the Secretary of State for amendments of existing laws placed a further burden upon the system.⁷¹

There were other compelling reasons for creating a central legislature. First, as the federal government grew and fiscal matters became increasingly centralised in the Resident-General's office, it was thought desirable that legislative authority should be given to the raising and expenditure of large revenues.⁷² The State Councils were never empowered to consider financial questions and it was doubtful whether State legislatures could empower the federal government to

69. Smith did not consider the questions of a central legislature (Smith to Sec. State, 30 June 1893, CO 273/188) but his successor Mitchell thought the creation of such a body was likely in the future. Similarly, Lucas agreed, and thought that the Durbar would 'gradually supercede' the State Councils. (Lucas, 8 Nov. in Mitchell to Sec. State, 1 May 1895, CO 273/203).

70. See Chapter VII.

71. See Mitchell to Sec. State, 31 Mar. 1899 and his suggestions that all proposed legislation should be submitted to the Secretary of State before it was brought before the State Councils and Swettenham's similar proposal in his despatch of 10 May 1901, CO 273/273.

72. This want of legislative authority was felt in the matter of raising a loan for railway construction in 1897. (Wilson, 20 June, in J.A. Swettenham to Sec. State, 13 May 1898, CO 273/240.)

expend public finance for the Federation as a whole. Second, with the increasing investment of European capital in the Malay States many Europeans came to take up local residence and, after 1896, increasingly brought pressure to bear for some form of representation in the business of government.⁷³ In Selangor in 1889, and in Perak fifteen years later Europeans were appointed to the State Councils;⁷⁴ but the inability of these bodies to scrutinize public expenditure and the desire of the central government to prevent amendments for the sake of identical legislation made it difficult for the European members to exert an effective voice in the affairs of government. Indeed, one of Anderson's principal arguments for the formation of the Federal Council was the desirability of exposing the business of government to the direct criticism of the representatives of a 'strong body of intelligent Europeans.'⁷⁵ In particular he thought that by giving a 'direct outlet' to this 'influential community' the quality of legislation would improve.⁷⁶

73. For instance as early as 1897 the Malay Mail decried the lack of representation on the State Council of the growing European community in Selangor. (Malay Mail, 29 July 1897).

74. Following a protest meeting in June 1899 (Malay Mail, 7 June and 26 June, 1899) George Cumming, a manager of a tin-mining company, was nominated by the Resident as a member representing the non-official European community in Selangor. (Selangor Annual Report, 1899, C. 382, p. 38 and J.A. Swettenham to Sec. State, 26 May, 1900, CO 273/261.)

75. Sir John Anderson met a group of Europeans in Ipoh in July 1904 who urged the appointment of one of their group to the State Council. (Anderson to Sec. State, 14 Nov. 1904, CO 273/303.) This was followed by the appointment of Douglas Osbourne to the Perak State Council later the same year. (Anderson to Sec. State, 6 Sept. 1905 in C. 2777, p. 5.)

76. From a speech made in London in 1909 and quoted in Malay Mail, 23 Oct. 1909.

Several suggestions had been raised for the creation of a central legislature. In 1898 Colonial Office officials considered the formation of a Resident-General's council which, although administrative in the first instance, might eventually develop as the central legislative authority for the entire Federated Malay States.⁷⁷ In 1901 Treacher suggested the formation of a 'Federal Council' composed of representatives of the State Councils to pass federal laws, but it was opposed by the Colonial Office because conditions were not thought to be 'ripe'.⁷⁸ Other proposals were put forward all of which involved some expansion of the Conference of Residents while E.W. Birch recommended including the rulers and calling the council a 'Federal Council'. These latter recommendations became the basis of Anderson's proposals laid before the Secretary of State in 1907.⁷⁹

77. The Colonial Office's wish to bring the Federated Malay States under crown colony procedure in respect of European civil servants prompted the suggestion of the formation of an 'executive council' before which cases involving dismissal could be heard under rules set out in the Colonial Regulations. (Johnson, 18 June in J.A. Swettenham to Sec. State, 13 May 1898, CO 273/240.)

78. Treacher to High Commissioner, 12 Mar. 1901; Sec. State to Swettenham, 4 July 1901, in Swettenham to Sec. State, 10 May 1901, CO 273/273.

79. Taylor memorandum, 1905, enclosed in Anderson to Sec. State, 26 Dec. 1907, CO 273/331. Taylor in this memorandum revived a suggestion made by Treacher of expanding the Conference of Residents to include representatives of the non-official community. (See Resident-General Annual Report, 1903, C. 2243, p. 36.) The idea of establishing a central legislature had been discussed in public for some time. For instance the Perak Pioneer proposed the creation of a 'Common Council' for all four States. (Quoted in Malay Mail, 14 Apr. 1904.)

These proposals envisaged not one, but two councils, a 'Federal Council' and an 'Administrative Council'. As the Secretary of State did not approve the establishment of the latter council, a description of it may be deferred for the moment. The draft of the 'Agreement for the constitution of a Federal Council' (with the exclusion of the articles describing the Administrative Council and one or two other minor changes) was approved as submitted by Anderson.⁸⁰ Eleven articles provided for the establishment of the 'Federal Council of the Federated Malay States',⁸¹ with a membership of the High Commissioner, Resident-General and the four rulers and Residents in order of precedence and four 'unofficial members.' For every government departmental head who might be appointed, another unofficial had to be added.⁸² Any ruler unable to attend sittings was permitted to nominate a representative from his State Council.⁸³ Articles seven and eight provided for the

80. The despatch recommending the formation of the councils and the draft agreement are to be found in Anderson to Sec. State, 26 Dec. 1907, CO 273/331 and a copy of the final agreement appears in Maxwell and Gibson, Treaties, p. 71-3.

81. While the Treaty of Federation described the Federation as the 'Protected Malay States', in this Agreement the name 'Federated Malay States' appears for the first time in such a document.

82. Departmental heads were to hold their seats during the High Commissioner's pleasure and unofficial members for three years. (Article four)

83. In the case of Negri Sembilan, however, the nomination had to be made by the four Undang. (Article 6). This exception was not included in the original draft and may well have been introduced after the protests of the Undang who during this period were resisting attempts by the Yam Tuan to exercise powers not connected with his office. (See Anderson to Sec. State, 2 Sept. 1909, CO 273/351.) In this connection a newspaper report in 1909 claimed that "minor" chiefs had protested to some parts of the Agreement. (Malay Mail, 22 Oct. 1909.)

convening of Council at least once a year and for the publication of drafts of proposed legislation in a government Gazette.at least one month before being submitted to Council. Two other articles provided that all departmental heads and unofficial members appointed to the Federal Council required the approval of His Majesty the King and that the High Commissioner would act as 'President' of the Council, or in his absence, the Resident-General.⁸⁴

The remaining articles described the Council's powers and functions and, like many passages in the Treaty of Federation, they were vague and ambiguous. For instance, although Anderson claimed that the Federal Council by virtue of this Agreement secured authority to enact laws and control public expenditure, no such power was explicitly granted.⁸⁵ The preamble declared that the rulers desired to provide for the 'joint arrangement of common interests' and for the 'proper enactment of all laws' for the Federation of more than one State. Articles eight and nine assumed the ability of Council to enact laws and article ten empowered it to 'consider' the annual estimates of revenue and expenditure, but no explicit grant of authority to enact legislation was given to the Federal Council. This omission, did not go unnoticed. The acting Legal Adviser raised doubts about this point when the Agreement was first published in 1909, but without securing any amendment.⁸⁶ It

84. Respectively articles three and five.

85. Fed. Co. Pro., 11 Dec. 1909.

86. Legal Adviser in HCO Confd. 12/1910 quoted in Gibson Memorandum, in Clementi Papers.

was also recognized by at least one official in the Colonial Office, but G. Fiddes, without giving his reasons, successfully opposed any attempt to define 'more exactly the powers' of the Council.⁸⁷

In view of these criticisms of the draft Agreement, it is difficult to account for Anderson's failure to produce a more lucid document. One explanation might be that when Anderson first proposed the formation of a Council and canvassed the opinion of the Sultan of Perak through E.W. Birch, the latter reported the Sultan as being willing to support the proposal, but wanted all draft enactments to be submitted to the State Council before it was enacted by the Federal Council. He also wished that the existing powers of the State Council 'in matters which were now within its final decision' should not be curtailed by the Federal Council.⁸⁸ As examples of these subjects Birch listed 'the Muhammadan religion, Mosques, Political Pensions, Native Chiefs, Penghulus, Conversions of Agricultural into Mining Lands.' Precisely what control the State Councils were to have over federal legislation was not explained, but perhaps Sultan Idris (and Birch too) saw the formation of the Federal Council as an opportunity for strengthening the powers of the State Council in legislative matters. There is no evidence to suggest that the ruler objected to any provisions in the final draft, but his disenchantment with Federation was well known at

87. Antrobus, 23 Jan and Fiddes, 1 Feb. 1908, in Anderson to Sec. State, 26 Dec. 1907, CO 273/331.

88. E.W. Birch memorandum (n.d.), enclosed in Ibid.

this time. It is possible that he foresaw difficulties in its provision, as did the Yang di-pertuan Besar of Negri Sembilan who hesitated to sign the Agreement, apparently, as his report of the incident suggests, because he thought it might lead to a further decline in the powers of the States.⁸⁹ Indeed, when Anderson first gained the rulers approval to the principle of a 'common legislative body' based upon Sultan Idris' suggestions, all the rulers stipulated that the existing powers of the State Councils should be preserved.⁹⁰ It is not surprising, therefore, that the final draft should have appeared to retain the authority of the State Councils. Thus, article nine in defining the division of legislative authority between the Federal and State Councils declared that matters touching upon the 'Mohammedan Religion, Mosques, Political Pensions, Native Chiefs and Penghulus' and whatever else which might affect 'the rights and prerogatives of a ruler or might be deemed by the High Commissioner as lying 'properly' within the jurisdiction of the State Council, were to be 'exclusively reserved' to the State Council. Even in defining the powers of the Federal Council, the burden of description fell upon the State Councils; that all existing laws and future State legislation would have 'full force and effect' except where 'they may be repugnant to provisions' of a law enacted by the Federal Council. Similarly, article ten was constructed to give

89. Fed. Co. Pro., 14 Dec. 1925.

90. E.L. Broackman to High Commissioner, 4 Dec. 1907 enclosed in Anderson to Sec. State, 26 Dec. 1907, CO 273/331.

prominence to the position of the State Councils in matters of public finance; that published annual estimates of revenue and expenditure, after they had been 'considered by the Federal Council, had to be tabled in the State Councils.

The curious construction of these articles and the prominence given to the State Councils, suggest that a more precise statement of the powers of the Federal Council was deliberately avoided. This view is strengthened by the presence of article eleven in the Agreement. Taken directly from article six of the Treaty of Federation, it declared that nothing in the Agreement was 'intended to curtail any of the powers or authority' of the rulers. The inclusion of this guarantee in the Agreement is remarkable in view of the encroachments already made upon the rulers powers by the rise of a central government under the Treaty of Federation. Moreover, the other provision of the Agreement contradicted this article. For instance, although the source of legislative authority for Federal Council enactments could be said to be the four rulers, individually they each sacrificed a measure of their prerogative by entering into such an agreement to provide for the 'joint arrangement of common interests'. Also, if Anderson's view of the supreme legislative authority in a State is accepted, namely that it rested with the ruler only and not with the ruler in council, then the implicit grant of legislative powers to the State Councils in article nine

constituted a further curtailment of the rulers' prerogative.⁹¹ It is difficult to resist the conclusion that the Agreement was drafted less with a view to securing a precise definition of powers of the several councils than with gaining the signature of the rulers and chiefs. It had to appear to preserve the authority and position of the rulers while bringing into existence an institution which could rationalize the functions of government; it had to appear to retain the powers of the State Councils while providing for the establishment of a central legislature; and it had to sustain the notion of government by advice while disguising the existence of a central government and the actual relationship between the State and Federal governments. Hence, in the Agreement is found the reference to the Federation being administered under the 'Advice of the British Government', the inclusion of the rulers on the Federal Council and the emphasis on the powers and

91. Fed. Co. Pro., 11 Dec. 1909. By this time the original commissions (titah) establishing the Perak and Selangor State Councils appear to have been lost or forgotten and no court had decided what constituted the supreme legislative authority in a Malay State. Not long after the Agreement was signed, in a case heard before the Court of Appeal of the Federated Malay States, the Chief Judicial Commissioner argued that 'the Supreme Legislative Authority in the State Selangor is vested in the Sultan; except perhaps in so far as the Sultan may have limited his own powers by treaty or by grant of legislative authority to some council or other body'. He went on to say that even if as was in practice the case that the ruler's legislative authority was limited to enacting laws by the Sultan in Council, would 'only mean that the Sultan in Council has such power to legislate as Parliament has in the United Kingdom.' (From the unreported case of Yap Hon Chin v. Jones Parry and Cowan, quoted in J.R. Innes, 'Some notes on the constitution and legislation of the Federated Malay States' JSL., New Series, No. XXXV, Jan. 1916, p.26.

functions of the State Councils and the renewal of the pledge in Article eleven not to limit the powers of the rulers. No mention is made of the existence of the central government or the powers of the Resident-General and no explanation is given to indicate how the Federal and State laws were to be implemented. Moreover, the authority of the Federal Council to make laws was only implied in articles eight and nine. Similarly, the Federal Council's authority to control public finances is only vaguely implied in its right to 'consider' (a word taken by the Colonial Office to mean 'consider and pass') the annual estimates.⁹²

Other features of the Agreement throws light on Anderson's desire to bring the High Commissioner directly into the Federation's affairs. Five articles vested the High Commissioner with specific powers; with the approval of His Majesty the King, he could nominate the four unofficial members, and determine the tenure of the former at Council; he was to be President and responsible for convening Council at least once a year, and also for deciding on any extension of legislative powers to the State Councils.⁹³ As President the High Commissioner was able to direct the business of the Federal Council, defend government policy and explain the government's legislative programme. But his role as principal government spokesman suggests a wider control over the

92. Fiddes, 1 Jan., 1908, in Anderson to Sec. State, 26 Dec. 1907, CO 273/331.

93. Respectively articles three to five, seven and nine.

policy-making procedure than previous High Commissioners had held. Indeed, in the original draft of the agreement Anderson proposed the creation of an 'Administrative Council' which could have enabled the High Commissioner to control the details of administration and decide upon policy.⁹⁴ This council, to be composed of the rulers, Residents, Resident-General and High Commissioner, was to consider all business to be submitted to the Federal Council. The Secretary of State, however, refused to approve its formation on the ground that it would consist of all the official members of the Federal Council and therefore duplicate work. If it met frequently, there would also be difficulty in obtaining full attendance.⁹⁵ Anderson replied that he wished to preside at both councils and especially at Administrative Council. He disliked having resolutions and proposals of the Conference of Residents submitted to him without knowing the arguments and opinions of its members.⁹⁶ By attending the Conference of Residents he could enter directly into the decision-making process and thereby bring the administration of the Federated Malay States directly under his control. Although the Secretary of State again refused his request, he recommended that the High Commissioner should reside at the regular meetings of the Conference

94. The draft article read as follows: 'The drafts of all laws intended and all resolutions or other business proposed by the Government to be submitted to the Federal Council consisting of the High Commissioner, the Resident-General, the above named Rulers and the British Residents in their several States, and the draft Federal and State Estimates shall also be considered by this Council before publication.' (Enclosed in Anderson to Sec. State, 26 Dec. 1907, CO 273/331.)

95. Fiddes, 1 Feb; Antrobus, 29 Dec. in Anderson to Sec. State, 26 Dec. 1907, CO 273/331 and Sec. State to Anderson, 8 Jan. 1909 in Anderson to Sec. State, 7 Dec. 1908, CO 273/341.

96. Anderson to Sec. State, 8 Feb. 1909, CO 273/349.

of Residents.⁹⁷

Anderson, nevertheless, appears to have believed that only the formal establishment of this council would secure the High Commissioner's position in the Federation. Seven months after the inaugural meeting of the Federal Council he again urged the proposal. In the intervening period, however, he had taken two steps to draw the High Commissioner further into the Federation's administration. As an indication of his divided responsibilities, commencing in 1910, the cost of the High Commissioner's salary was shared equally between the Colony and the Federated Malay States.⁹⁸ In the same year Anderson replaced the formal letter as the method of correspondence between the High Commissioner and the Resident-General with the circulation of minute papers making it possible, as before 1896, for the High Commissioner to see all relevant correspondence and other papers on any subject rather than the Resident-General's summary of important arguments.⁹⁹

In the middle of 1910 Anderson proposed abolishing the post of Resident-General in order to bring the senior resident executive officer 'more directly under control,' and in its place recommended the appointment of a 'Chief Secretary to Government' to reflect more exactly the subordination of this officer to the authority of the High Commissioner. Simultaneously, he revived the idea of an Administrative Council or at least of the High Commissioner's participation at the

97. Sec. State to Anderson, 20 May 1909, in Ibid.

98. Anderson to Sec. State, 20 Jan. 1910, CO 273/360.

99. Anderson to Sec. State, 27 July 1910, CO 273/363.

Commissioner's participation at the Conferences of Residents in order to secure more 'harmonious and effective working' of the administration. He expressed his intention to spend more time in the Malay States; he proposed acquiring the Resident-General's residence for himself and building another for the Chief Secretary. With the change of title, he recommended the scaling down of the Chief Secretary's salary by £260 to £2,000, but with a corresponding rise in his entertainment allowance and similar reductions in the titles of the posts of Federal Secretary and assistant to Federal Secretary to that of 'Assistant Secretary' and 'Second Assistant' respectively. The post of Secretary to High Commissioner, he urged, should be raised from Class III to II with an increase of salary from £600-700 to £900-1,200.¹⁰⁰

With the exception that the Secretary of State chose Anderson's alternative to the suggestion to an Administrative Council, these recommendations were approved and implemented in 1911. Only the change of the Resident-General's title required some formal expression. In November 1910 Anderson announced in the Federal Council his decision to create a new post and in the following January, under a certificate of urgency, an enactment was passed giving effect to the change.¹⁰¹ It amounted to a supplementary treaty amending the Treaty of Federation: the rulers 'with the consent of the British Government', approved the change of title to that of 'Chief Secretary to Government' who would

100. Anderson to Sec. State, 27 July 1910, CO 273/331.

101. Fed. Co. Pro., 2 Nov. 1910 and 19 Jan. 1911.

retain all the 'rights, privileges and powers' conferred upon the Resident-General.¹⁰² As a law of incorporation, those powers, liabilities and obligations conferred upon the Resident-General in 1898 were transferred to the Chief Secretary. It did not, therefore, effect the powers of the Chief Secretary within the Federated Malay States, but in one important respect this enactment altered the relationship between the Chief Secretary and the High Commissioner in a way which had not existed between the Resident-General and High Commissioner. Whereas in the Treaty of Federation the Resident-General is designated as the 'agent and representative' of the British Government and only then 'under' the Governor, in this enactment, the High Commissioner, de jure gained the power to appoint the Chief Secretary's successor, or temporary deputy with the approval of the Secretary of State.¹⁰³ The effect was to state more precisely the relationship between the two by suggesting the subordination of the Chief Secretary to the High Commissioner. Also, the title itself lent emphasis to the High Commissioner's entry into Federation affairs for it followed the Cyprus constitution in which the position of the High Commissioner and Chief Secretary was comparable to that of a Governor and Colonial Secretary in a crown colony.¹⁰⁴

v

This enactment was intended to give formal effect to the change

102. Federal Enactment No.1 of 1911, 'An Enactment to Incorporate the Chief Secretary to Government.'

103. Section 9, Ibid.

104. Colonial Office List, 1911, pp.156-8.

of title and suggest the High Commissioner's fuller participation in the administration of the Malay States, but it was Anderson's other reforms which made the High Commissioner's authority effective. At the same time, these same reforms, as was intended, altered in several important ways the structure and function of government. One of these, the creation of the Federal Council, brought about important changes in the legislative process and the control of public finances.

The Federal Council was inaugurated on 11 December 1909. It was convened in its first year for four days and thereafter, until it was reconstituted in 1927, for about six days each year. The first meeting was held at Kuala Kangsar, but later sittings were usually convened at Kuala Lumpur the federal capital.¹⁰⁵ Its membership consisted of the four rulers and their Residents, the four unofficial members and the High Commissioner and Resident-General (or after 1910 the Chief Secretary to Government).¹⁰⁶ With the exception of the single Chinese member, the unofficial members represented, as Anderson had intended,

105. Anderson to Sec. State, 20 Dec. 1909, CO 273/352.

106. No department head except the Legal Adviser was appointed to the Federal Council until 1921. The Legal Adviser, however, under article 5A, could attend Council to assist in discussions on legal matters. (Young to Sec. State, 26 Nov. 1912, CO 273/388). In 1912 the Legal Adviser became a full voting member under three and in accordance with the provisions of this article another unofficial member was added to the Council. In the same year it was noticed that there was no provision in the Agreement for the appointment of provisional members (Young to Sec. State, 8 Aug. 1912, CO 273/386) and in December 1912 a supplementary agreement was made to correct the anomaly (Young to Sec. State, 19 Dec. 1912, CO 273/388 also a copy in Maxwell and Gibson, Treaties, p. 74.)

the principal economic sectors of European enterprise in the Federated Malay States.¹⁰⁷ F.D. Osborne was a partner in a firm of mining engineers;¹⁰⁸ R.W. Harrison was the manager of a firm which managed estates, the former chairman of the Planters Association of Malaya in 1907 and the director of thirteen rubber companies by 1912;¹⁰⁹ and J.M.H. Robson was the managing director of the Malay Mail Press Company, the land agent to Loke Yew, one of the wealthiest Chinese in the Federation with mining and planting interests.¹¹⁰ Although their

107. The first Chinese member Eu Tong Sen was appointed 'provisionally for Leong Fee (Anderson to Sec. State, 20 Dec. 1910, CO 273/352; FMSGG No. 275, 18 Feb. 1910, p. 125.) A second Chinese member was added in 1921. (Fed. Co. Pro., 26 July, 1921.) A request by an Indian resident of Kuala Lumpur in 1911 for an Indian member to the Federal Council was refused by the Secretary to State on Anderson's advice that the Sultans objected to them being appointed. (Sec. State to Anderson, 25 Oct. 1911 in K. Feavathan to Sec. State, 10 Sept. 1911, CO 273/397.)

108. Robinson minute (n.d.) in Anderson to Sec. State, Tel., 14 October 1909, CO 273/351. H.D. Griffiths who succeeded Osborne was President of the Perak Chamber of Mines and General Manager of Trench Mines Ltd. (Anderson to Sec. State)

109. Anderson to Sec. State, 20 Dec. 1909, CO 273/352; Rubber Producing Companies, London, 1913 and A. Staines Manders, Who's Who in the Rubber World, London, 1914. Harrison was succeeded by C.M. Cumming (FMSGG, No. 1900, 29 Feb. 1910, 1022 who was a director of nine rubber companies (Rubber Producing Companies 1913, p. 494) and chairman of the Planters Association of Malay in (Who's Who in the Rubber World, p. 30).

110. Robinson (n.d.) in Anderson to Sec. State, (Tel.), 14 Oct. 1909, CO 273/351; J.W. Dissett, Who's Who In Malaya, Singapore, 1918.

share in the economy was substantially less than that of the Chinese community, the Europeans held their seats as that kind of persons most likely to make a useful contribution to the business of Council. It is also probable that Anderson would have defended such appointments with the argument he used to explain the rulers approval of the Federal Council, that the 'prosperity and progress' of the Federated Malay States was 'bound up with the advancement of British interests in the Malay Peninsula.'¹¹¹ However, their increasing importance in the economy and the governments desire to foster and encourage European investment, made it possible and desirable for Europeans to take an important and influential share in the decisions of government. The Chinese continued to exert influence through the Secretary for Chinese Affairs, and the Chinese Advisory Boards as well as through the single representative on the Federal Council, but hence forth it had to share its influence with the non-official European community.

The conduct of business in the Federal Council closely followed that of the Colony's Legislative Council. Questions by unofficials were permitted, three readings with a committee stage, were given to each bill and speeches on any topic allowed on the adjournment motion. 'Standing' and 'select' committee were formed, that on finance being the most important. Thorough procedure and the presence of the Legal Adviser and representatives of special interests improved the quality of the enactments while more careful drafting of legislation necessitated fewer amendments.

111. Fed. Co. Pro., 11 Dec. 1909.

The effect of creating the Federal Council was to simplify legislative procedure especially where an enactment was applicable to more than one State. Draft legislation continued to be considered by the Conference of Residents, but instead of having to enact the law in four State Councils it simply required the approval of the one Council. The division of legislative powers between the Federal and State Councils meant, moreover, that the bulk of laws passed in the Federated Malay States between 1909 and 1927 were enacted by the Federal Council. Consequently, the State Councils were given little opportunity to exercise its legislative powers. Whereas between 1895 and 1909, the four State Councils enacted 1034 laws (Perak 248, Selangor 268, Negri Sembilan 273 and Pahang 245), during the period 1909, until the reform of the Federal Council in 1927 they passed only 71 laws (Perak 18, Selangor 15, Negri Sembilan 15 and Pahang 23).¹¹² But even in these few enactments were subject to the same legislative procedure as Federal enactments whereby the drafts were submitted to the Conference of Residents and required the approval of the High Commissioner.¹¹³ For a time at least one State Council discussed Federal legislation as it was published, but without any power to affect amendments the practice soon

112. Comparable figures for a slightly different period are recorded in Federal Council Paper No. 37 of 1926 entitled "Report of a Legal Committee appointed by His Excellency the High Commissioner to consider the subject of the extension of legislative power to the State Councils."

113. Sel. Rec., No. 235.

died out.¹¹⁴

Under the Scheme of 1896 the control of public finances had remained in State hands. Although the annual estimates of revenue and expenditure continued to be published separately for each State, administrative control rapidly became centralised in the Resident-General's office. Article ten in effect gave formal recognition of this fact by extending to the Federal Council the authority to 'consider' the annual estimates of revenue and expenditure - an authority which became in practice a right to control all public expenditure.¹¹⁵ At first the deployment of surplus balances and the granting of loans to other countries were excluded from the Council's jurisdiction,¹¹⁶ but by 1911 these subjects too, with the approval of the High Commissioner, became proposer matters for the Federal Council's consideration.¹¹⁷ Whereas formerly the Federal and State estimates were submitted first to the Resident-General and then to the High Commissioner, they were in 1910 transmitted to the Federal Council. There they were examined first by the 'Finance Committee' composed of the Chief Secretary as chairman and the four unofficial members and then, if approved by the Committee,

114. E.W. Birch to W. Shelford, 7 Oct. 1925, E.W. Birch Papers.

115. S. Anderson stated in his inaugural address to the Federal Council that it was to control public finances. (Fed. Co. Pro., 11 Dec. 1909).

116. Fed. Co. Pro. 19 Jan. 1911,

117. Ibid.

they were forwarded to the Council, to be sanctioned in the legislative form of a 'Federal Supply Enactment.'¹¹⁸ Similarly, the approval of the Finance Committee was necessary for all supplementary expenditure. The limits for such expenditure remained for the Residents and Resident-General unchanged, but the High Commissioner for the first time was limited to approving expenditure up to \$10,000. When the sum exceeded that figure and was not more than \$50,000 it had to be referred by the High Commissioner to the Finance Committee for its approval. Additional expenditure above \$50,000 could only be made by a formal resolution of the Council.¹¹⁹

Thus, for the first time, legislative authority was given to public expenditure. The State Councils had never been asked to give such an authority, instead the Resident and Resident-General, with the High Commissioner's approval, authorized public expenditure for the State and Federal governments respectively. The establishment of the Federal Council, however, shifted the responsibility for public finances from the executive to the legislature. This change did not necessarily mean that the executive lost any real control over public finance as it was always possible for the government to use the official majority in the Federal Council to secure approval for any expenditure. But the presence of the unofficial members in the Finance Committee and their ability to

118. See section 244 (i) (d) of the Federated Malay States General Orders, (revised to Dec. 1913).

119. Ibid.

publicly criticise the government tended to inhibit the government's arbitrary use of this power. The result was that the government experienced a forceful restraint upon its ability to control public finance.

Anderson argued in public that it was his intention to admit the States to 'greater control' in the federal administration.¹²⁰ The creation of the Federal Council, however, produced the opposite effect. Although the rulers sat on the Federal Council, and their assent was a necessary part of the legislative procedure, they held their seats as ordinary members with a single vote, they rarely contributed to the debates, and, by virtue of their commitment to accept the advice of the British government, they were obliged to assent to all legislation enacted by the Council. The few subjects set aside in the Agreement for the State Councils, meant that these bodies seldom functioned in their legislative capacity. The few links with the Federal Council quickly faded away; Federal legislation was no longer discussed in the State Councils and the annual estimates of revenue and expenditure was never tabled in them. The Resident's powers in the legislative process, therefore, were reduced; in the State Councils they had little opportunity to exercise them and in the Federal Council they were subject to the instructions of the President. And in matters of finance, neither the Residents, nor any other representative of the States held

120. Fed. Co. Pro. 2 Nov. 1910.

a seat on the powerful Finance Committee.¹²¹

It is possible, of course, that the Residents may have exercised greater influence after 1910. The circulation of minute papers to the High Commissioner and the presence of the latter at the Conferences of Residents may have given the Residents a greater opportunity to present their views than previously. Unfortunately, in these areas of government there is little evidence which might throw light on the subject as the proceedings of the Conferences of Residents were not kept in verbatim form and the papers of the High Commissioner and Chief Secretary's secretariats were destroyed during the last war. But regardless of the extent of their personal influence, the fact remains that the creation of the Federal Council intensified the centralisation of the functions of government and reduced the powers of the States. Although by 1909 the decision-making process had become concentrated in the Resident-General's office, the implementation of many of its decisions fell to State Governments. The enactment of identical laws in the four State Councils is the most obvious example. The establishment of the Federal Council was a logical step to simplify control of the legislative procedure, but at the same time it rendered the State Councils almost useless.

121. The Sultan of Perak protested unsuccessfully against the composition of the Finance Committee arguing that the Federal Council particularly the Resident-General and unofficials could know nothing of the State requirements and, therefore, that body should also contain the Residents. (E.W. Birch to Sir John Anderson, 23 Mar. 1910, in Clementi Papers.)

It was never Anderson's intention to impede this development and all his reforms, including the establishment of the Federal Council, had the effect of accelerating the process whereby the responsibility for the functions of State departments was taken over by the central government. However, this development was the result of Anderson's principal concern and most important achievement, that of subordinating the authority of the Resident-General to his own instructions and establishing himself as the 'ultimate authority',¹²² in the affairs of the Federated Malay States. This he accomplished by circumscribing the powers of the Resident-General in legislative and financial matters by the establishment of the Federal Council, in the decision-making process by presiding at the Conference of Residents, and in the details of administration by his ability to issue executive orders. Thus, it was unnecessary for the High Commissioner to either acquire formally executive powers or to alter fundamentally the powers of the Resident-General or his successor the Chief Secretary to Government. Furthermore, by exercising his authority through the machinery of the central government, it was unnecessary for the High Commissioner to diminish the powers of the Resident-General and the federal departments in respect of the State administrations. As the bulk of the legislation enacted before 1914 shows, the wide executive powers granted to the Resident-General before 1911 continued to accrue to the Chief Secretary.

The powers of the High Commissioner, therefore, were hardly

122. Fed. Co. Pro., 2 Nov. 1910.

apparent in the formal sense. However, in 1912 and 1914 enactments were passed which in giving wide powers to the High Commissioner indicated more clearly his position in the Federated Malay States. In 1912 when it was thought that the concluding of international treaties was too cumbersome, the High Commissioner, rather than the Chief Secretary whose powers were thought to be inadequate, was granted authority by the four rulers to sign and seal all such agreements on their behalf.¹²³ Then in 1914 under the 'Public Emergency Enactment' the High Commissioner secured very extensive executive and quasi-legislative powers. Based upon an order in Council granting the Governor of the Straits Settlements wider powers to deal with emergencies which might arise during the war, the enactment or portions of it was to remain in force until 1930.¹²⁴ Introduced under a certificate of urgency in typescript, the words 'Chief Secretary' were supplanted in pencil by those of 'High Commissioner'. This apparently hurried alteration was fiercely denounced by the unofficial members of the Council as a device to bind the Straits Settlements and Federated Malay States inseparately. Sir Arthur Young, then High Commissioner, readily agreed that the effect of the enactment might be to draw the two administrations together more closely, but their affairs were then so 'intertwined' that he believed that in over all policy 'there should be no division of authority.'¹²⁵

123. FMS Enc. No. 8 of 1912, 'The Treaties and Agreements Validation Enactment.'

124. FMS Enc. No. 1 of 1914, 'The Public Emergency Enactment.'

125. Fed. Co. Pro. 11 Aug. 1914.

CONCLUSION

At the time of its conception Federation must have seemed like the only logical step in the gradual combination of British protected States in the Malay Peninsula. It was hoped that eventually it would be extended to incorporate Johore. Some had suggested that the Malay States might be annexed to the Straits Settlements, but this idea was always rejected on the grounds that it would amount to breach of faith with the Malay rulers to protect their political integrity. But why was Federation not expanded to include the other Malay States? The simple answer appears to be that Federation was too successful.

It has been argued above that apart from the difficulties in Pahang and the personal ambition of Swettenham the idea was conceived with a view to erecting a more efficient administrative machine to promote and sustain capitalist enterprise in the four States. If this was the case, it reaped a reward during the next ^{when} twenty years ¹the Federated Malay States experienced a period of remarkable economic development. However, the efforts of the States departments to keep apace with these events under the central direction of the Resident-General and a few federal advisers soon became bogged down. Under Treacher, and presumably Swettenham's sanction a large federal establishment was created

which in time took over most of the important functions of the State governments. However, so swiftly did these events take place that they tended to heighten tensions between conflicting interests within the Federation and between the Federation and its neighbours. This manifest^{ed} itself in two ways which were to have a long standing effect on the constitutional development of Malaya. First, it tended to set the Sultans and their Residents up in opposition to the Resident-General. Many Residents resented their loss of power and the intrusion of Federal officers into State affairs. The rulers who looked upon the Residents as their spokesman, viewed any reduction of the Residents' powers as a blow at their own position and prestige. Moreover, the rulers felt that their interests and those of the Malays generally were being sacrificed in the rush to erect an efficient government for the rapid economic exploitation of the country by Europeans and Chinese. In this respect many of the Residents associated themselves with the rulers as defenders of Malay interests. E.W. Birch's tenure as Resident of Perak illustrates this point.

Second, the considerable power exercised by the Resident-General tended to exclude the High Commissioner from the affairs of the Federation. It, had, of course, been one of the principal arguments in favour of federation that the appointment of a Resident-General would relieve the Governor, as he was then, of

much responsibility for the details of administration in the Malay States. However, the Resident-General soon established such complete control of the Federation's affairs that the High Commissioner found it impossible to command any effective voice in the country's administration. As he was responsible for British interests in Malaya as a whole, Anderson refused to tolerate this situation with the result that his period of High Commissioner was marked by frequent conflicts between himself and the Resident-General. Thus, the changes in the balances of power between the High Commissioner and the Resident-General on the one hand and the Resident-General and the Residents and rulers on the other became the dominant feature of subsequent attempts to modify the administration of the Federated Malay States.

One might have expected Anderson's reforms to have swung the balance of power back in favour of the High Commissioner, but although more administrative and commercial links were established between the Colony and the Federated Malay States during his period, the powers of the chief executive authority of the Federation remained largely intact and were even strengthened during the first World War. Indeed, the extent of the centralisation of power in his office, led to the general call for the devolution of his authority to the State administrations after the war. This development coincided with a demand by the rulers in 1922 for a restoration of wide powers to the State governments and enabled

Sir Laurence Guillemard to win support from the rulers for his proposal to abolish the office of Chief Secretary to Government and to invite the northern Malay States and Johore to join the Federation. But for a slight reform of the Federal Council, he was forced to abandon his reforms in the face of opposition from the business interests in Malaya which was vigorously supported by the Chief Secretary, Sir George Maxwell.

It was left to Sir Cecil Clementi to try and find some constitutional formula which might enable him to resolve the basic conflicts in the Federation. In 1931 he proposed the creation of a properly constituted federation, with a written constitution defining the division of powers between the federal and state governments. While Clementi's proposals were never fully implemented, they deserve notice for their relevance to later developments. First, he proposed to unravel the 'bureaucratic amalgamation' in the Federated Malay States by devolving the powers of the federal departments to the State governments. Some of the more important federal departments such as railways and posts and telegraphs were to become 'pan-Malayan' departments, responsible to the High Commissioner, and extending their control to all the Malay States under British protection and to the Straits Settlements. The office of Chief Secretary to Government was to be abolished, his duties as liaison officer between the High Commissioner and the

rulers falling to the Secretary to the High Commissioner. He then hoped to establish the reconstituted federation under a written constitution which was to take the form of a treaty and finally he hoped that once this had been inaugurated, the remaining Malay States would find it possible to join. This was a bold plan that was designed to bring the High Commissioner into direct control of the federation and remove the Chief Secretary as a rival. It would also restore a large measure of power to the rulers and their Residents. The decision to strengthen the Malay sultanates, which many at this time believed were an anachronism, was an important factor in Clementi's proposals and indicative of a new element in the political life of Malaya. During the latter half of the 1920's there was a growing awareness among British officials of the political significance of the presence of a large and partly settled Chinese population. So rapid was the rise of the Kuo Min Tang between 1925-30 that some feared that its hold over the Chinese could lead to the establishment of an imperium in imperio. Moreover, there was increasing evidence that the Malays resented the Chinese and that they saw them as a threat to their way of life. Clementi hoped, therefore, to link British and Malay interests together in a federal constitution. He saw the ruler as the focal point of the Malay political and social system and thus the basis upon which might be built a bulwark against Chinese political aspirations. In this way Clementi's policy provided the genesis for federal government in post-war Malaya.

APPENDIX A

ENGAGEMENT ENTERED INTO BY THE CHIEFS OF PERAK AT PULO PANGKOR.

DATED 20TH JANUARY, 1874.

Whereas, a state of anarchy exists in the Kingdom of Perak owing to the want of settled government in the Country, and no efficient power exists for the protection of the people and for securing to them the fruits of their industry, and,

Whereas, large numbers of Chinese are employed and large sums of money invested in Tin mining in Perak by British subjects and others residing in Her Majesty's Possessions, and the said mines and property are not adequately protected, and piracy, murder and arson are rife in the said country, whereby British trade and interests greatly suffer, and the peace and good order of the neighbouring British Settlements are sometimes menaced, and,

Whereas, certain Chiefs for the time being of the said Kingdom of Perak have stated their inability to cope with the present difficulties, and together with those interested in the industry of the country have requested assistance, and,

Whereas, Her Majesty's Government is bound by Treaty Stipulations to protect the said Kingdom and to assist its rulers, now,

His Excellency SIR ANDREW CLARKE, K.C.M.G., C.B., Governor of the Colony of the Straits Settlements, in compliance with the said request, and with a view of assisting the said rulers and of affecting a permanent settlement of affairs in Perak, has proposed the following Articles of arrangements as mutually beneficial to the Independent Rulers of Perak, their subjects, the subjects of Her Majesty, and others residing in or trading with Perak, that is to say:-

1. First. - That the Rajah Muda Abdullah be recognised as the Sultan of Perak.
2. Second. - That the Rajah Bandahara Ismail, now Acting Sultan, be allowed to retain the title of Sultan Muda with a pension and a certain small Territory assigned to him.
3. Third. - That all the other nominations of great Officers made at the time the Rajah Bandahara Ismail received the regalia be confirmed.
4. Fourth. - That the power given to the Orang Kayah Mantri over Larut by the late Sultan be confirmed.

5. Fifth. - That all Revenues be collected and all appointments made in the name of the Sultan.
6. Sixth. - That the Sultan receive and provide a suitable residence for a British Officer to be called Resident who shall be accredited to his Court, and whose advice must be asked and acted upon on all questions other than those touching Malay Religion and Custom.
7. Seventh. - That the Governor of Larut shall have attached to him as Assistant Resident, a British Officer acting under the Resident of Perak, with similar power and subordinate only to the said Resident.
8. Eighth. - That the cost of these Residents with their Establishments be determined by the Government of the Straits Settlements and be a first charge on the Revenues of Perak.
9. Ninth. - That a Civil list regulating the income to be received by the Sultan, by the Bandahara, by the Mantri, and by the other Officers be the next charge on the said Revenue.
10. Tenth. - That the collection and control of all Revenues and the general administration of the country be regulated under the advice of these Residents.
11. Eleventh. - That the Treaty under which the Pulo Dinding and the islands of Pangkor were ceded to Great Britain having been misunderstood and it being desirable to re-adjust the same, so as to carry into effect the intention of the Framers thereof, it is hereby declared that the Boundaries of the said Territory so ceded shall be rectified as follows, that is to say:-

From Bukit Sigari, as laid down in the Chart Sheet No. 1 Straits of Malacca, a tracing of which is annexed, marked A, in a straight line to the sea, thence along the sea coast to the South, to Pulo Katta on the West, and from Pulo Katta a line running North East about five miles, and thence North to Bukit Sigari.
12. Twelfth. - That the Southern watershed of the Krian River, that is to say, the portion of land draining into that River from the South be declared British Territory, as a rectification of the Southern Boundary of Province Wellesley. Such Boundary to be marked out by Commissioners; one named by the Government of the Straits Settlements, and the other by the Sultan of Perak.
13. Thirteenth. - That on the cessation of the present disturbances in Perak and the re-establishment of peace and amity among the contending factions in that Country, immediate measures under the control and supervision of one or more British Officers shall be taken for restoring as far as practicable the occupation of the mines, and the possession of Machinery, &c., as held previous to the commencement of these disturbances, and for the payment of compensation for damages, the decision to such officer or officers shall be final in such case.

14. Fourteenth. - The Mantri of Larut engages to acknowledge as a debt due by him to the Government of the Straits Settlements, the charges and expenses incurred by this investigation, as well as the charges and expenses to which the Colony of the Straits Settlements and Great Britain have been put or may be put by their efforts to secure the tranquility of Perak and the safety of trade.

The above Articles having been severally read and explained to the undersigned who having understood the same, have severally agreed to and accepted them as binding on them and their Heirs and Successors.

This done and concluded at Pulo Pangkor in the British Possessions, this Twentieth day of January, in the year of the Christian Era, one thousand eight hundred and seventy-four.

Executed before me,

ANDREW CLARKE,
Governor, Commander-in-Chief and Vice-Admiral
of the Straits Settlements.

Chop of the Sultan of Perak.

" Bandahara of Perak.
" Tumongong of Perak.
" Mantri of Perak.
" Shahbander of Perak.
" Rajah Mahkota of Perak.
" Laxamana of Perak.
" Datoh Sa'gor.

TRANSLATION OF THE MALAY VERSION OF THE PANGKOR ENGAGEMENT.

There are many troubles in the State of Perak because there is no permanent ruler with full powers which may safeguard the subjects of the State who may benefit from their work. There are also many Chinese working in the tin mines, and much money has been spent by people under the English flag. Others who are working under the British Government also open up tin mines in the State of Perak. For the people who work in the tin mines and their properties there has been insufficient protection given.

At the present there are many robberies, murders and burning of houses in the State of Perak. On account of this there has been considerable loss in business and properties of the people under the English flag. Furthermore it is not very safe and there has been no proper arrangements made with states under the administration of the British flag.

As there are Major Chiefs in the State who have informed the Government that they have insufficient power to settle the troubles in Perak, State they and other people who have invested their money in the State ask for help because the British Government has promised by Treaty to protect the Government and also people governed by the State.

Now His Excellency Sir Andrew Clarke,,K.C.M.G., C.B., Governor of three Settlements of Singapore, Penang and Malacca, because of that request and for that reason may help the ruler so that all arrangements with the Major Chiefs in the State of Perak could be fully settled. As such His Excellency sets out all matter mentioned below so as to provide safety and prosperity for the ruler who rules the State of Perak and its subjects and people under the British flag and others living in the State of Perak or trading with the State of Perak:-

Item 1 - The present Raja Muda of Perak State should be acknowledged as the Sultan of the State.

Item 2 - The present Raja Bendahara Ismail who is now acting as Sultan should from now on be given the title of Ex-Sultan, and also a pension be made payable to him and a small district is to be under his own administration.

Item 3 - All Major Chiefs, who received their titles at the time Raja Ismail was acting Sultan are to have their titles confirmed.

Item 4 - The power conferred upon the Orang Kaya Menteri at Larut by the late Sultan remains permanent.

Item 5 - All revenues and all taxes on lease should be in the name of the Sultan of Perak.

Item 6 - The Sultan should accept and build a suitable residential house for one officer who is under the British Government whose title shall be British Resident of Perak State and who is to be trusted by the British Government. The Sultan of Perak shall have to consult with him on all matters and the working of Perak State except that he cannot interfere with Muslim religious affairs and Malay custom.

Item 7 - Furthermore, whoever rules Larut shall also have to accept an officer from amongst British Government officials whose title shall be Assistant Resident. He is to follow the instructions of the British Resident in Perak and his powers and duties shall be the same as those of the British Resident.

Item 8 - Expenses incurred in connection with the British Residents and their salaries which should be determined by the Government of the Straits Settlements should be paid out of the revenues of the State of Perak.

Item 9 - A list should be prepared containing the names of the Sultan, Bendahara, Menteri and other Major Chiefs of the State of Perak, stating how much money each may receive and this expenditure should also be paid out of the revenues of the State of Perak.

Item 10 - The administration, collection of all revenues as well as the order governing rules and regulations of the State should be with the consultance and advice of the British Resident.

Item 11 - As there is less understanding about all the facts of the Treaty concerning the Island of Dindings and Pangkor Island which have been handed over to Great Britain, and in order that a clear statement may be made to suit the needs of those persons who signed the Treaty, the boundaries of those lands are at present fixed as follows:- In the North, the boundary of Tampu and the State of Larut and from there straight inland till it reaches exactly Bukit Sakari. Then from the boundary of Larut it reaches Pulau Katak. From Pulau Katak to the east for five miles inland, and from there it cuts directly to Bukit Sakari. A marked sketch map is attached to this Agreement.

Item 12.- All lands which are drained by the river in the South flowing into Krian River are to become British Government lands, so that the southern boundary of Province Wellesley may be determined and shown by the Commissioners, one from the Government of the Straits Settlements, and one from the Sultan of Perak.

Item 13 - When all the present troubles in the State of Perak have stopped and been settled, and when there is peace between the two sides of the Chinese community in the State, an immediate investigation should be made and a full finding made on all matters concerning the tin mines and mechanical equipments used in the State of Larut as they were before the troubles broke out. And also full finding be made on all losses incurred during the troubles in the State. All matters concerning the investigations, corrections, and the determining of all matters mentioned above should be done under the instructions and advice of a Government officer with authority and whatever orders issued by such officers in their respective matters cannot be changed.

Item 14 - The Crang Kaya Menteri in Larut, further, promises to admit his debt to the Government of the Straits Settlements regarding all expenses concerning the settlement of all these matters, and all expenses already paid or to be paid by the British Government because of his actions to provide for safety to all traders under the British flag. All items mentioned above have been read over and explained to the persons who appended their signatures at the bottom of this document. All of them have understood and have accepted this Agreement on behalf of themselves and their successors in their Government.

This Agreement was made and written on Pangkor Island, under the British flag on the 20th January, 1874.

This Agreement was made in my presence, Governor and Commander-in-Chief and Vice-Admiral, Straits Settlements.

(SEAL)

Maulana Paduka Sri Sultan
Abdullah Mohamed Shah Ibni
Almarhum Sultan Jaffar Maghtam
Shah, Sultan of Perak Darul-ridzwan.
1288.

(SEAL)

Orang Kaya Hassan Paduka
Raja ibni Mohamed Ariff
Temenggong of Perak State.
1281

(SEAL)

Raja Bendahara, Representative of the
Sultan of Perak. 1275.

(SEAL)

Paduka Sri Maharaja
Ibrahim ibni Jaffar,
Mentri of Perak State.
1281.

(SEAL)

Orang Kaya Laxamana
Raja Mahkota bin
Abdul Wafak of Perak
State, Ruler of the Sea.
1278.

(SEAL)

Sulaiman bin
Mohamed Taha,
Raja Mahkota of Perak
State.
1288.

(SEAL)

Shahbandar of Perak
State bin Mahmud.
1281.

(SEAL)

Orang Kaya Sukor of
Perak State ibni
Mohamed Nan.
1280.

I hereby certify that the above is a
true translation made by me of the original
which is in the Malay language.

Sd. Ismail b. Peral
Malay Interpreter,
Supreme Court,
Singapore.
10/3/52.

APPENDIX B

F E D E R A L T R E A T I E S

TREATY OF FEDERATION, 1895.

Agreement between the Governor of the Straits Settlements, acting on behalf of the Government of Her Majesty the Queen, Empress of India, and the Rulers of the following Malay States:- that is to say, Perak, Selangor Pahang and the Negri Sembilan.

1. In confirmation of various previous Agreements, the Sultan of Perak, the Sultan of Selangor, the Sultan of Pahang, and the Chiefs of the States which form the territory known as the Negri Sembilan, hereby severally place themselves and their States under the protection of the British Government.

2. The above-named Rulers and Chiefs of the respective States hereby agree to constitute their countries a Federation, to be known as the Protected Malay States, to be administered under the advice of the British Government.

3. It is to be understood that the arrangement hereby agreed upon does not imply that any one Ruler or Chief shall exercise any power or authority in respect of any State other than that which he now possesses in the State of which he is the recognised Ruler or Chief.

4. The above-named Rulers agree to accept a British Officer, to be styled the Resident-General, as the agent and representative of the British Government under the Governor of the Straits Settlements. They undertake to provide him with suitable accommodation, with such salary as is determined by Her Majesty's Government, and to follow his advice in all matters of administration other than those touching the Muhammadan religion. The appointment of the Resident-General will not affect the obligations of the Malay Rulers towards the British Residents now existing or to be hereafter appointed to offices in the above-mentioned Protected States.

5. The above-named Rulers also agree to give to those States in the Federation which require it such assistance in men, money, or other respects as the British Government through its duly appointed officers may advise; and they further undertake, should war break out between Her Majesty's Government and that of any other Power, to send, on the requisition of the Governor, a body of armed and equipped Indian troops for service in the Straits Settlements.

Nothing in this Agreement is intended to curtail any of the powers or authority now held by any of the above-named Rulers in their respective States nor does it alter the relations now existing between any of the States named and the British Empire.

The above Agreement was signed and sealed by the under-mentioned Rulers and Chiefs of the various States in July, 1895.

His Highness the Sultan of Perak
His Highness the Sultan of Selangor.
His Highness the Sultan of Pahang.
His Highness the Yam Tuan Besar of Sri Menanti.
The Dato' Bandar of Sungai Ujong.
The Dato' of Johol.
The Dato' of Jelebu.
The Dato' of Rembau.
The Tungku Dewa of Tampin.

بیهوا مک اداله فرجهچین این دفربراه انارا تروان یفتراواتم جهور تیگ بواه نگری گنتی کراجان هرمتستی کونین یفهاملی دان مها بسر دان راج ۲ دان اورغ بسر
یغ مورتنیکی ددالم نگری فیراق دان سلاغور دان فیغ دان ددالم نگری سمبیل

۱. یفتراواتم مک مسفرة صورۃ فرجهچین بیتله دفربراه دهورلو اوله یغدفرتوان نگری فیراق دان یغدفرتوان نگری سلاغور دان یغدفرتوان نگری فیغ دان راج ۲ دان اورغ
بسر ۲ یغ مورتنه ددالم نگری سمبیل مک فد سکارخ این ماسیخ ۲ مفاکو دان مستنکی فرجهچین یغدهورلو ایت برناو یغ دباوه بندیرا دان کنولوش دان نصیحه کراجان کونین
یفهاملی دان مها بسر

۲. یفکدرا مک راج ۲ دان اورغ بسر ۲ یفتوسبه داتس این مفاکو اکن نگری بوله منجادی مسراه جماعه دغی نام نگری ۲ سلیو یغبرناو یغ دباوه بندیرا اغگریس مک نگری
ایت بوله دفرتنیکی دغی نصیحه کراجان اغگریس

۳. یفتکیگ مک تیاداله بوله راج ۲ اتوی اورغسر مسراه نگری یفتوسبه ایت منجالتکن کوانس کدالم نگری یغلاین درود نگری

۴. یفکامقه مک راج ۲ دان اورغ بسر ۲ نگری یفتوسبه دیاتس این مفاکو بوله ای منبرم مسراه فکاو کراجان اغگریس گلارانی رشتین جندرال یغ بوله مسک کوانس
درود کراجان اغگریس دان منجادی گنتی تروان یفتراواتم جهور تیگ بواه نگری مک راج ۲ دان اورغ بسر ۲ ایت مفاکو بوله ای مفاکان مسراه تمقه یغلایق باقی کدورنکی
رشتین جندرال ایت مسره ممبار سیراف بلنجا یغ فائو کفد تیسیاغی کراجان کونین یفهاملی دان مها بسر

شهادالاهی راج ۲ دان اورغ بسر ۲ ایت مفاکو فولا اکی بوله ای مسوره نصیحه رشتین جندرال ایت ددالم مسکل حل احوال فرتنه نگری لائین درود فکار اهما اسلام
مک کجادی رشتین جندرال این تیاداله مغورنکی فرجهچین یغدفربراه دهورلو دفریاق سلاغور فیغ دان نگری سمبیل فصل کریضمان راج ۲ نگری ایه منبرم رشتین ۲ یقاد فد هاری
این ددالم نگری ایت اتو یغ هندق دشتکی فد کدنی هاری

۵. یفکلیم مک راج ۲ دان اورغ بسر ۲ یفتوسبه دیاتس این برجهچی یغ بوله ای مسری کفد ماسیخ ۲ فرتولوش اورغ ۲ اتو راغ اتوک لائین ۲ منام یغ فائو کفد تمباکی
کراجان اغگریس

مسباکلی جکلو سکیران بریکیه ففراغی انارا کراجان کونین یفهاملی دان مها بسر دان لاین ۲ کراجان مک راج ۲ دان اورغ بسر ۲ یفتوسبه داتس این برجهچی بوله
ای هندکر درود یغسا یغلایق دغی مسوکت لکف عالتی اکی منجاک دان منولغ ددالم تیگ بواه نگری

۶. یفکام مک فرجهچین این تیاد مسکالی ۲ مغوبه اتوی مغورنکی کوانس مان ۲ راج ۲ یفتوسبه داتس این ددالم نگری دان تیاد مسکالی ۲ داوبنکی فرجهچین یقاد فد هاری
این انارا نگری فیراق سلاغور فیغ اتوی نگری سمبیل دغی کراجان کونین یفهاملی دان مها بسر

فرتولیس کفد دوا بلس هاریبولی جرون تاهن ۱۸۵۵ بریتولن دغی لائین بلس هاریبولی ذالجه هجرةالنبي ۱۳۱۲

C. B. H. MITCHELL,

SEAL.

Governor and Commander-in-Chief,

Straits Settlements.

21st June, 1895.

WITNESS to the seal and signature of Sir C. B. H. Mitchell, Governor of the Straits Settlements; to the seal and signature of the Sultan of Perak; to the seals of the Sultans of Pahang and Selangor; to the seal and signature of the Yam Tuan Besar of Sri Menanti; to the seal of the Dato' Klana of Sungai Ujong and signature of the Acting Dato' Klana Ahmed; to the seal and signature of the Dato' Bandar of Sungai Ujong; to the seal and signature of the Dato' Pengulu of Jelebu; to the seal of the Dato' of Johol and the signature of Dato' Baginda Tan Mas; to the seal of the Dato' of Rénbau and the signature of Dato' Mंत्री Lela Perkasa, and to the seal and signature of Tunku Dewa of Timpin.

F. A. SWETTENHAM.

26th July, 1895.

داتو کلان

سلطان

کونین

سلطان

الویش داله

APPENDIX C.

AGREEMENT FOR THE CONSTITUTION OF A
FEDERAL COUNCIL, 1909.

Agreement between the High Commissioner of the Federated Malay States acting on behalf of the Government of His Majesty The King, Emperor of India, and the Rulers of the Federated Malay States of Perak, Selangor, Pahang and Negri Sembilan.

Whereas by the Treaty entered into in July, 1895, known as the Treaty of Federation the above-named Rulers agreed to constitute their countries a Federation to be known as the Protected Malay States to be administered under the advice of the British Government, and whereas the above-named Federation was duly constituted as provided in the above-named Treaty, and whereas the above-named Rulers further desire that means should be provided for the joint arrangement of all matters of common interest to the Federation or affecting more than one State and for the proper enactment of all laws intended to have force throughout the Federation or in more than one State, it is hereby agreed:-

1. That on and after a date to be fixed by His Majesty a Council shall be established to be known as the Federal Council of the Federated Malay States.

2. In the first instance the following shall be members of the Council:-

The High Commissioner.
The Resident-General.
The Sultan of Perak.
The Sultan of Selangor.
The Sultan of Pahang.
The Yam Tuan of Negri Sembilan as representing
the Undang of the Negri Sembilan.
The Resident of Perak.
The Resident of Selangor.
The Resident of Pahang.
The Resident of Negri Sembilan.

Four unofficial members to be nominated by the High Commissioner with the approval of His Majesty. The absence of any member shall not invalidate any proceedings of the Council at which he has not been present.

3. If hereafter it should in the opinion of the High Commissioner be desirable to add to the Council one or more of the heads of the various public departments, he may do so subject to the approval of His Majesty, and may in such case and subject to the like consent also nominate not more than one additional unofficial member for every official member so added to the Council.

4. A head of a department who is nominated to the Council shall hold office so long as the High Commissioner thinks fit. Unofficial members shall hold office for three years.

5. The High Commissioner shall be President of the Council and in his absence the Resident-General shall be President.

5a. The Legal Adviser of the Government may attend any sitting of the Council and assist in the discussion of any legal questions which may arise in the course of its proceedings but shall not be entitled to a vote; and any head of a public department may similarly attend and assist in the discussion of any matter affecting his department but shall not be entitled to a vote.

6. If any of the Rulers above-named is unable to be present he may nominate one of the members of his State Council to represent him. In the case of Negri Sembilan, the nomination shall be by the Undang.

7. The Council shall meet at least once in every year at a place to be appointed from time to time by the High Commissioner.

8. Unless the President of the Council shall certify in writing that it is a matter of urgency every law proposed to be enacted by the Council shall be published in the Government Gazette at least one month before being submitted to the Council.

9. Laws passed or which may hereafter be passed by the State Councils shall continue to have full force and effect in the State except in so far as they may be repugnant to the provisions of any law passed by the Federal Council, and questions connected with the Mohammedan Religion, Mosques, Political Pensions, Native Chiefs and Penghulus and any other questions which in the opinion of the High Commissioner affect the rights and prerogatives of any of the above-named Rulers or which for other reasons he considers should properly be dealt with only by the State Councils shall be exclusively reserved to the State Councils.

10. The Draft Estimates of Revenue and Expenditure of each State shall be considered by the Federal Council, but shall immediately on Publication be communicated to the State Councils.

11. Nothing in this Agreement is intended to curtail any of the powers or authority now held by any of the above-named Rulers in their respective States, nor does it alter the relations now existing between any of the States named and the British Empire as established by previous Treaties.

The above Agreement was signed and sealed by His Excellency Sir John Anderson, G.C.M.G., High Commissioner for the Federated Malay States, on the twentieth day of October, 1909, having been signed and sealed before that date by the undermentioned Rulers and Chiefs of the Federated Malay States:-

His Highness the Sultan of Perak.

His Highness the Sultan of Selangor.

His Highness the Regent of Pahang.

His Highness the Yang-di-Pertuan Besar of Negri Sembilan.

The Dato' Klana Petra of Sungai Ujong.

The Dato' of Johol.

The Dato' of Jelebu.

The Dato' of Rembau.

The Tungku Dewa of Tampin.

APPENDIX D.

F.M.S. ENACTMENT NO. I OF 1911.

An Enactment to Incorporate the Chief Secretary to Government.
John Anderson, (19th January, 1911.)
President of the Federal Council.

Whereas by an Agreement signed and sealed in the month of July, 1895, the Rulers and Chiefs of Perak, Selangor, Pahang and Negri Sembilan agreed to constitute their countries a Federation to be administered under the advice of the British Government and agreed further to accept a British Officer, to be styled the Resident-General, as the agent and representative of the British Government under the Governor of the Straits Settlements and undertook amongst other things to follow his advice in all matters of administration other than those touching the Muhammadan religion, but so that the appointment of the Resident-General should not affect the obligations of the said Rulers towards the British Residents then existing or to be thereafter appointed to offices in the above-mentioned States: And whereas by certain Enactments passed by their Highnesses the Sultans of Perak, Selangor and Pahang and by His Highness the Yang di Pertuan and Chiefs of Negri Sembilan in Council in and for their respective States it is among other things enacted that the British Officer appointed in pursuance of the above-named agreement to be the Resident-General and his successors shall be a body corporate, and for the purposes of the said Enactments have the name of "the Resident-General" and shall and may have and use a corporate seal, and the said seal may from time to time break, change, alter and make anew as to the said Corporation may seem fit; and the said Corporation is by the said Enactments empowered to sue and be sued, to enter into contracts, to acquire, purchase, take, hold and enjoy movable and immovable property of every description, and to sell, convey, assign, surrender and yield up, mortgage, demise, reassign, transfer or otherwise dispose of any movable and immovable property vested in the said Corporation upon such terms as to the said Corporation may seem fit.

And whereas the Rulers of the States hereinbefore named, with the consent of the British Government, are minded that the British Officer appointed or hereafter to be appointed in pursuance of the agreement above referred to shall hereafter be styled "the Chief Secretary to Government" and not as heretofore "the Resident-General" but shall nevertheless possess and enjoy all and every one of the rights, privileges and powers conferred, and exercise all and every one of the duties imposed, upon the Resident-General by the agreement and Enactments hereinbefore referred to and by any law heretofore enacted by the Ruler or the Ruler and Chiefs of any of the above-mentioned States in Council or by the Rulers of the Federated Malay States in Council except in so far

as such law shall have been or may hereafter be repealed by the Rulers of the Federated Malay States in Council or by the Ruler or Ruler and Chiefs in Council of the State in and for which it was enacted.

Now therefore it is hereby enacted by the Rulers of the Federated Malay States in Council as follows:

Short title and commencement.

1. This Enactment may be cited as "The Chief Secretary (Incorporation) Enactment, 1911," and shall come into force upon the 1st day of February, 1911.

Repeal.

2. On the coming into force of this Enactment the Enactments specified in the schedule hereto shall be repealed in so far as the continued operation of the said Enactments is or might be inconsistent with the provisions of this Enactment or the operation thereof.

Incorporation of Chief Secretary to Government.

3. Sir Arthur Henderson Young, Knight Commander of the Most Distinguished Order of St. Michael and St. George, and his successors in the office of Chief Secretary to Government shall be a body corporate, and shall for the purposes of this Enactment have the name of "the Chief Secretary to Government" and by that name have perpetual succession and shall and may have and use a corporate seal, and the said seal may from time to time break, change, alter and make anew as to the said Corporation may seem fit; and the said Corporation is hereby empowered to sue and be sued, to enter into contracts, to acquire, purchase, take, hold and enjoy movable and immovable property of every description, and to sell, convey, assign, surrender and yield up, mortgage, demise, reassign, transfer or otherwise dispose of any movable and immovable property vested in the said Corporation upon such terms as to the said Corporation may seem fit.

Mode of sealing deeds.

4. All deeds, documents and other instruments requiring the seal of the said Corporation shall be sealed with the seal of the said Corporation in the presence of the said Sir Arthur Henderson Young or in the presence of his successor for the time being in the office of Chief Secretary to Government, and shall also be signed by the said Sir Arthur Henderson Young or by his said successor, and such signing shall be, and shall be taken as, sufficient evidence of the due sealing of such deeds, documents or other instruments.

Property to vest.

5. All property, movable and immovable, of whatever description which immediately before the commencement of this Enactment was vested in the Resident-General shall on such commencement vest in the Chief Secretary to Government, and all rights, powers and authority belonging or attaching

immediately before such commencement to the Resident-General or which would have thereafter accrued to the Resident-General by virtue of anything done before such commencement and all duties imposed upon the Resident-General shall belong, attach, accrue or be deemed imposed upon the Chief Secretary to Government.

Written laws or documents.

6. Wherever in any written law or document passed or made before the commencement of this Enactment the words "Resident-General" occur such written law or document shall be read as if the words "Chief Secretary to Government" were from the commencement of this Enactment substituted for the words "Resident-General."

Actions pending.

7. All actions and proceedings commences by or in the name of the Resident-General before the commencement of this Enactment may be continued, carried on and completed after such commencement by or in the name of the Chief Secretary to Government.

Seal of Resident-General may be continued in use.

8. Until a new seal has been made for the use of the Chief Secretary to Government the seal in use at the commencement of this Enactment as the seal of the Resident-General may be used and shall if and so long as it is used after the commencement of this Enactment be deemed to be the seal of the Chief Secretary to Government.

Appointment of successors and of acting officers.

9. If at any time after the commencement of this Enactment the Chief Secretary to Government for the time being shall be absent from the Federated Malay States or shall otherwise be incapable of performing all or any of the duties or exercising any of the rights, powers or authority belonging or attaching to the office of Chief Secretary to Government or shall have resigned or been removed from such office it shall be lawful for the High Commissioner with the approval of the British Government to appoint some other person to be his successor in the office of Chief Secretary to Government or to act temporarily for him in the said office, as the case may be, and a notification in the Gazette of such appointment shall be conclusive evidence for all purposes that such person was duly so appointed and it shall be lawful for any person so appointed to act in the office of Chief Secretary to Government to do and perform the continuance of such appointment all or any of the things which may lawfully be done or performed by the Chief Secretary to Government and anything so done or performed shall be deemed to have been done or performed by the Chief Secretary to Government.

S C H E D U L E.

State.	No. and year.	Short title.
Perak	18 of 1898	Resident-General's (Incorporation) Enactment, 1898.
Selangor	19 of 1898	" "
N. Sembilan	15 "	" "
Pahang	4 of 1899	Resident-General's (Incorporation) Enactment, 1899.

Passed this 19th day of January, 1911.

Claud Severn,
Clerk of Council.

BIBLIOGRAPHICAL NOTE

As the research for this thesis has been carried out in two countries it is difficult to compile a full and accurate list of sources consulted in Malaya. Many of the records have probably been removed from their original locations and deposited in the National Archives, Kuala Lumpur. As a general guide to the sources available in Malaya the reader is advised to consult the author's article 'Introduction to English Language Sources in the Federation of Malaya,' in K.G. Tregonning, Malaysian Historical Sources, (Singapore, 1962), but it should be referred to in conjunction with Hadji Abdul Mubin Sheppard's Report on the Public Record Office and National Archives, (1958-1962), (Kuala Lumpur, 1962). Finally the difficulty of listing separately annual and monthly reports which have been published either individually or in government gazettes or sessional papers have made it preferable to omit them from the bibliography, but to give the exact source when they are cited in footnotes.

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A MANUSCRIPTS

I Official

i Great Britain

The principal collection of manuscript records for the period covered by this study are the Colonial Office files located in the Public Records Office,

- CO 273 Straits Settlements, Original Correspondence, 1872-1914 and
- CO 537 Additional Despatches, 1873-98

which should be used with

- CO 425 Straits Settlements, Entry Books and
- CO 426 Straits Settlements, Register of Correspondence.

These contain correspondence between the Governor of the Straits Settlements and the High Commissioner to the Malay States and the Secretary of State. Unlike the copies of these despatches located in Singapore, they consist of the enclosures sent by the Governor and frequently private correspondence as well as departmental minutes. The Colonial and Foreign Office files search^d in connection with Borneo included similar material which are imprinted respectively

- CO 144 Labuan, Original Correspondence and
- FO 12 Correspondence relating to Borneo.

Also situated in the Public Records Office are two collections of council proceedings,

- CO 275 Straits Settlements Executive and Legislative Councils Proceedings, 1867-1914,
- CO 474 Sungai Ujong State Council Proceedings, 1883-93.

ii Malaya

Unbound letters written by the Governor of the Straits Settlements, 1867-83. These are located in the Singapore National Library; there are 280 letters which, but for 42, are addressed to Lt.-Col. (later Major-General) Archibald Anson, Lieutenant-Governor of Penang by Governors Ord, Clarke Jervois, Robinson and Weld.

Governors' Letter Books, 1877-94

are also to be found in Singapore National Library. They consist of three volumes of 350 letters written by Governors Robinson, Weld and Clementi Smith to members of the various administrations in the Malay States and the Straits Settlements as well as to Malay rulers and members of the Colonial Office.

✓ Selangor Records, 1875-1941.

These records, which are now located in the National Archives, Kuala Lumpur, are the files of the Selangor secretariat. They include district officers' reports, correspondence between the Governor and the Resident and the Resident and his officers.

✓ Selangor State Council Proceedings, 1877-1935.

Also in the National Archives, these are the original minutes.

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i Great Britain

E.W. Birch Papers, various correspondence and press clippings, in the possession of Miss Hilda Birch, Sussex.

Carnarvon Papers, various correspondence, 1872-1878, in the Public Records Office, PRO 30/6.

Chamberlain Papers, correspondence, in University of Birmingham Library.

Clementi Papers, various correspondence, memoranda relating to the Decentralisation question and proposals for constitutional reform in the possession of Lady Clementi, Holmer Court, Buckinghamshire.

Swettenham Journals, in the Library of Malay House, London. These seven journals appear to form a collection of twelve, of which ^{five} were edited and published by Professor C.D. Cowan, 'Sir Frank Swettenham's Perak Journals', JMBRAS, Vol. XXIV, Pt. 4. These seven cover the period Swettenham resided in Selangor, two trips to Perak and a trip to the East Coast of the Malay Peninsula.

ii Malaya

Swettenham Papers, on loan to the Government of Malaysia and are held in the National Archives, Kuala Lumpur. They consist of correspondence and a few official publications.

B PRINTED SOURCES

I Official

i Confidential Prints

CO 809 Colonial Office Confidential Prints

Many of these prints eventually published in the Parliamentary Papers, though often with some documents omitted. See the List of Colonial Office Confidential Prints to 1916, (London, 1965.)

CAB Cabinet Office Records

A collection of papers prepared on special problems and circulated to the Cabinet. See List of Cabinet Office Records, (London, 1964.)

ii Parliamentary Papers

Much of correspondence concerning the appointment of British Residents to the Malay States and Birch's assassination as well as the annual reports of the Residents, Resident-General and Chief Secretary to Government were published in these. The references to pages here are to the pagination in the annual volumes and those in the text to the pagination of the individual papers.

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- 1874 : Vol. XLV, C. 1111, p. 611.
- 1875 : Vol. LIII, C. 1320, p. 55.
- 1876 : Vol. LIV, C. 1505, p. 287; C. 1510, p. 637; C. 1512, p. 669.
- 1877 : Vol. LXI, C. 1709, p. 395.
- 1879 : Vol. LI, C. 2410, p. 409.
- 1882 : Vol. XLVI, C. 3285, p. 661; C. 3428, p. 705; 3429, p. 683.
- 1884 : Vol. LV, C. 4192, p. 419.
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- 1888 : Vol. LXXIII, C. 5352, p. 813; C. 5566, p. 669.
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- 1890-1 : Vol. LVII, C. 378, p. 513; C. 6222, p. 351; C. 6290, p. 445.
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- 1904 : Vol. LX, C. 1819, p. 307.
- 1905 : Vol. LIV, C. 2243, p. 527.
- 1906 : Vol. LXXVIII, C. 2777, p. 355; C. 3186, p. 455.
- 1908 : Vol. LXXIII, C. 3741, p. 597.
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- 1914-6 : Vol. XLVI, C. 7709, p. 299; C. 8155, p. 343.
- 1933 : Vol. X C 4276, p. 501

iii Government Gazettes

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Federated Malay States Government Gazette, 1909-14.

Negri Sembilan Government Gazette, 1896-1909.

Pahang Government Gazette, 1897-1909.

Perak Government Gazette, 1888-1909.

✓ Selangor Government Gazette, 1890-1909.

Straits Settlements Government Gazette, 1867-1914.

Sungai Ujong Government Gazette, 1893

iv Council Proceedings

Federal Council Proceedings, 1909-41.

Straits Settlements Legislative Council Proceedings, 1867-1914.

v Collections of Laws

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✓ Gibson, W.S. (Comp.) The Laws of the Federated Malay States and each of them in force on the 31 day of December, 1934. 4 Vols. London, 1935.

Voules, A.B. (Comp.) The Laws of the Federated Malay States, 1877-1920. 3 Vols. London, 1921.

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